APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-848

JACK A. FUSARI, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act.

Appellant,

v.

LARRY STEINBERG, et al

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

Appeal Docketed November 13, 1973

Jurisdiction Noted February 19, 1974

TABLE OF CONTENTS

JACK A. FUSARI, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act.

Appellant,

v.

LARRY STEINBERG, et al

Appellees.

Relevant Docket Entries

* * * *

1972

6/12 Complaint filed.

8/ 7 Motion to Dismiss filed.

8/ 7 Motion for Order Determining this Action is not a Class Action filed by defendant.

* * * *

9/11 Motion to Intervene filed by Mary Delicato, Dilly LaPietra, Margaret Hoadley, Judith Roy, Shirley Gonzales and Leo E. Hart.

* * * *

9/18 Motion to Determine the Propriety of Class Action filed by plaintiffs.

9/19 Motion to Intervene as Plaintiffs filed by Delia Triana, Luis Rodriguez, Primitivo Comacho and Juan Miranda.

9/19 Motion for Preliminary Injunction filed by Delia Triana, Luis Rodriguez, Primitivo Comacho and Juan Miranda.

9/19 Motion to Intervene as Plaintiffs filed by Jose M. Lopez and Juan Lopez.

9/19 Motion for Preliminary Injunction filed by Jose M. Lopez and Juan Lopez.

9/22 Objection to Motion to Intervene filed by defendant.

9/25 Objection to Motion to Intervene filed by defendant.

* * * *

10/ 2 Hearing on (1) Defendant's Motion to Dismiss; (2) Defendant's Motion for Order Determining this Action is not a Class Action; (3) Motion of Mary Delicato, Dilly LaPietra, Margaret Hoadley, Judith Roy, Shirley Gonzales and Leo E. Hart to Intervene; (4) Plaintiffs' Motion to Determine the Propriety of Class Action; (5) Motion of Delia Triana, Luis Rodriguez, Primitivo Comacho and Juan Miranda to Intervene as Plaintiffs; (6) Motion of Delia Triano, et als for Preliminary Injunction; (7) Motion of Jose M. Lopez, et al for Preliminary Injunction; (8) Motion of Jose M. Lopez, et al for Preliminary Injunction; * * * (10) Defendant's Objection to Motions to Intervene dated 9/7/72; and (11) Defendant's Objection to Motion to Intervene dated 9/19/72; * * * Decision Reserved on all eleven motions. Newman, J. M-10/3/72.

10/10 Motion for Hearing to Present Testimony Regarding Motions for Preliminary Injunction and Notice of Motion, filed by defendant.

10/16 Hearing re Defendant's Motion to Present Testimony regarding Motions for Preliminary Injunction. Affidavits of D. S. Ballew and Delia Triana, filed by Defendant. Defendant's witnesses Mrs. Vivienne Goldstein, Mildred P. Cogswell and Carl D. Eisenman sworn and testified, * * * Decision Reserved. Newman, J. M-10/17/72.

10/19 Affidavit of Carl D. Eisenman filed.

10/20 Affidavit by Juan Lopez filed.

10/20 Application for Convening of a Three-Judge District Court, filed by plaintiffs and intervening plaintiffs.

10/20 Supplementary Affidavit of Primitivo Comacho filed.

10/20 Supplementary Affidavit of Juan Miranda filed.

10/20 Supplementary Affidavit of Delia Triana filed.

* * * *

11/6 Hearing on Plaintiffs' and Intervening Plaintiffs' Application for Convening a Three-Judge Court. Plaintiffs and Intervenors orally withdraw their claims for retroactivity. Decision Reserved. Newman, J. M-11/6/72.

11/13 Memorandum of Decision on Motions to Convene Three-Judge Court, to Intervene, to Dismiss and for Temporary Injunction, entered. Plaintiffs' request for determination of this suit as a class action will be deferred for consideration by the Three-Judge Court. The motions to intervene filed by Hart, Gonzales, Roy, Hoadley, LaPietra, Delicato, Comacho, Rodriguez, Jose Lopez, and Juan Lopez are denied; the motion to intervene as plaintiffs filed by Miranda and Triana are granted; the defendant's motion to dismiss is denied; the plaintiffs' motion to convene a three-judge court is granted; and the intervening plaintiffs motion for temporary injunctive relief is denied. Newman, J. M-11/14/72.

* * * *

11/13 Intervening Complaint of Delia Triana and Juan Miranda filed. * * *

* * * *

11/30 Motion for Production of Documents filed by plaintiffs.

12/4 Motion for Leave to File Supplemental Matter in an Amended Complaint, endorsed as follows: "Motion granted, absent objection." Newman, J. M-12/4/72.

12/4 Amended Complaint filed.

* * * *

12 8 Interrogatories to the Defendant and Requests to Produce filed by plaintiffs.

12 18 Objection to Interrogatories and Requests to Produce filed by defendant. * * *

1973

* * * *

1 22 Answer to Amended Complaint filed by defendant.

2 6 Answer to Motion for Production of Documents filed by defendant.

* * * *

3 1 Answer to Interrogatories and Requests to Produce together with documents, filed by defendant.

* * * *

3 26 Claim for Three-Judge Court Trial List filed by plaintiffs.

3 26 Tapes of Depositions of Eleanor H. Smarz and Commissioner Loughlin filed.

3 28 Deposition of Eleanor H. Smarz filed.

3 28 Deposition of Commissioner Loughlin filed.

4 2 Motion to Redetermine the Propriety of a Class Action filed by plaintiffs.

4 16 Objection to Motion to Redetermine the Propriety of a Class Action filed by defendant.

4 16 Hearing on Plaintiffs' Motion to Re-Determine the Propriety of a Class Action. Decision Reserved. * * * Newman, J. M-4/18/73.

4 16 Plaintiffs' Motion to Redetermine the Propriety of a Class Action, endorsed as follows: "Motion referred for consideration by the three-judge court." Newman, J. M-4/17/73.

* * * *

5/14 Three-Judge Court Hearing on the Merits. 1 Plaintiff's witness sworn and testified. Stipulation to facts filed. Stipulation as to Plaintiffs' Exhibits filed. Stipulation to Depositions filed. (Exhibits 8 and 9) Plaintiffs' Exhibits 1 thru 31 filed. Plaintiffs' List of Exhibits 1-30 filed. Defendant's Exhibits A thru E filed. 1 Defendant's witness sworn and testified.

* * * *

5/17 Affidavit of Juan Miranda, Sept. 6, 1972; Supplementary Affidavit of Juan Miranda, Oct. 18, 1972; Affidavit of Delia Triana, Sept. 12, 1972; and Supplementary Affidavit of Delia Triana, Oct. 18, 1972 to be marked as Plaintiffs' Exhibit 32, filed by plaintiff.

6/ 5 Proposed Consent Order filed by Defendant.

6/ 5 Affidavit of Theodore W. Hatcher filed by Defendant.

* * * *

9/17 Memorandum of Decision entered. "This suit presents the question of whether either the Fourteenth Amendment, or § 303 of the Social Security Act, 42 U.S.C. § 503 (a) (1), requires that recipients of Conn. unemment compensation benefits be afforded a *Goldberg v. Kelly* (397 U.S. 254 (1970)) hearing prior to being deprived of such payments, etc. ***, we conclude that the Connecticut System fails to meet minimal due process standards and therefore must be enjoined. Rule 23 (b) (2)'s requirement are met, and we designate this a class action. In summary, we find that the "seated interview" system as currently used for terminating or suspending the payment of unemployment compensation benefits does not provide minimal due process under the 14th Amendment to the Constitution. We accordingly enjoin the defendant Administrator, his successors in office, agents, etc. from administering Chapter 567, Conn. Gen. Stat. (§ 31-222 *et seq.*) in such a manner as to deprive members of the plaintiff class of unemployment benefits without first according

them a constitutionally sufficient prior hearing. This opinion shall serve as the Court's findings of fact and conclusions of law, under Fed. R. Civ. P. 52(a)." Smith, C. J.; Blumenfeld, D. J.; Newman, D. J. M-9/17/73.
***

9/25 Motion for Suspension of Injunction Pending Appeal filed by defendant.

9/25 Judgment entered that the defendant Administrator, his successors, etc. are enjoined from administering Chap. 567, Conn. Gen. Stat. (§ 31-222 *et seq.*) in such a manner as to deprive members of the plaintiff class of unployment benefits without first according them a constitutionally sufficient prior hearing. Markowski, C. Approved: Smith, C. J. ; Blumenfeld, D. J.; Newman, D. J. M-9/25/73.

10/ 1 Hearing on Motion for Stay Pending Appeal to Supreme Court. Argument by Counsel for Plaintiff and Defendant. Decision Reserved. Newman, J. M-10/2/73.

10/ 3 Order entered that the injunction issued by this Court on September 17, 1973, is stayed pending disposition of defendant's appeal by the Supreme Court, provided that defendant file a notice of appeal with this Court by October 9, 1973, and file a jurisdictional statement with the Supreme Court by November 9, 1973. Smith, C. J.; Blumenfeld, D. J.; Newman, D. J. M-10/4/73.

* * * *

10/ 9 Notice of Appeal to the Supreme Court of the United States filed by defendant.

* * * *

11/13 Appeal docketed.

12/ 3 Clerk's Certificate.

1974

2/19 Jurisdiction noted.

2/19 Order entered granting Motion to Proceed in forma pauperis.

EXHIBIT B

Case 1161-B-71

UNEMPLOYMENT COMMISSION

LARRY S. STEINBERG
Rt. 44, RFD No. 1
West Willington,
Connecticut 06279
045-36-2590

SECOND DISTRICT

vs.

Mailing date
May 10, 1972

THE ADMINISTRATOR
UNEMPLOYMENT
COMPENSATION ACT

Local office 18

APPEARANCES: Douglas M. Crockett, Esq. for the claimant. Bernard Gerling for the Administrator.

The claimant registered for work and filed a new claim for unemployment benefits as of April 11, 1971. On November 1 the examiner disapproved claims from October 10 on the ground of unavailability. The claimant's appeal, dated November 5, was assigned for hearing on December 2, 1971, postponed at the request of the claimant and held on January 13, 1972 at Willimantic, Connecticut.

FINDING OF FACTS

1. The claimant is a single man 25 years old. He has a bachelor's degree from the University of Connecticut. His major field of study was geography.

2. He worked as an ironmaker for Scherer Steel Company from sometime in 1969 to May, 1970.

3. The claimant registered for work and filed a new claim for unemployment benefits as of April 17, 1971. In the interim after May of 1970 he had been ill.

4. On April 26, 1971 the claimant was seated and was interviewed by an examiner who told him of his rights and responsibilities under the Unemployment Compensation Law, including the responsibility to reasonably seek work during every week for which benefits are claimed.

5. The claimant then received benefits for 26 weeks at $82 a week, through October 9, 1971.

6. On June 29 the claimant was again seated and interviewed by an examiner, who told him to keep a list of places where he looked for work.

7. On August 24 he was again seated and interviewed by an examiner who told him he must expend the scope of his efforts to find work, which up to that time had been mainly to telephone or go to Locals 37 and 424 of the Ironworkers Union.

8. On October 27 the claimant was again seated and interviewed by an examiner. He told the examiner that except for an inquiry at Brand Rex in May, 1971, all his efforts to obtain work had been through the hiring halls of the Ironworkers Union. In the week ending October 23 he had gone to the hall of Local 37 in Providence and had telephoned to Local 424 in New Haven and Local 15 in Hartford. He stated that he would accept only union work. He is not a union member but can work on a permit after all union card holders who want work are placed.

9. The above was summarized in writing and the claimant signed the information as true and correct.

10. The claimant was not given unemployment checks on October 27 for the weeks ending October 16 and 23, 1971, which would have been given to him if his claims had been approved as they had been in previous weeks back to April 26. He was told that his checks would be held and that he would get a decision in the mail.

11. If the claimant had asked for an immediate written decision on the disapproval of his claims it would have been given to him on that day. This is the policy and practice of the Unemployment Compensation Department.

12. Because he did not ask for a written decision on that day the examiner mailed him a decision on November 1 disapproving his claims from October 10. From this decision the claimant appealed on November 5.

13. A hearing of this appeal was assigned for December 2, 1971. At the claimant's request the hearing was postponed to January 13, 1972.

14. The claimant worked for Trahan Seafoods from November 22 to December 22, 1971. He was laid off due to lack of work.

15. He filed a partial claim for the week ending December 25, 1971 which was paid in the amount of $53.

16. He received unemployment benefits in subsequent weeks and has continued to receive them to the date of this finding of facts, at $82 a week.

17. The claimant contends that he had no opportunity to be heard prior to the stopping of his benefits effective October 10, 1971.

18. Notice is taken here of the policy and practice of the Unemployment Compensation Department. The policy is never to disapprove a claim until after at least one seated interview. At periodic interviews the examiner inquires of the claimant about any restrictions he may be placing on his availability in the labor market. The examiner also inquires where the claimant has looked for work. The claimant is informed that the Law requires he look for work. He is also informed that if he does not meet the eligibility requirements of the Law he will not receive checks.

19. This policy and practice was followed with this claimant.

20. The claimant was given not one but several hearings on his benefit eligibility status. At each of the seated interviews on April 26, June 29, August 24 and October 27 the claimant had every opportunity to present information favorable to his version of the facts in his situation.

21. The claimant's contention that he had no opportunity to be heard prior to the stopping of his benefits effective October 10 must fall in the light of the facts found. The Department's policy and practice are reasonably calculated to ensure that benefits are paid when due.

22. It is further found that had he continued to receive benefits he would not have made any more efforts to obtain work in subsequent weeks than he had made up to October 27.

23. His failure to make greater efforts to obtain work than he did make, after having been unemployed for a year and five months, leads to the conclusion that the claimant was restricting himself to employment as a union ironworker. He failed to expose himself unequivocally to the labor market and rendered himself unavailable for work within the meaning of the Law, because he was not ready, willing and able to accept work which he did not have good cause to refuse.

24. It is further found that the claimant, during the weeks in issue, from October 10 to November 20, failed to make reasonable efforts to obtain work.

DECISION

The Unemployment Compensation Law provides, among its conditions of eligibility for benefits, that a claimant must be available for work and that he must make reasonable efforts to obtain work during each week for which benefits are sought. The claimant, during the period at issue, is found not to have met this condition. It is held that he was correctly declared ineligible for benefits from October 10 through November 20, 1971. The examiner's decision is affirmed.

THADDEUS J. PAWLOWSKI
Commissioner, Second District

The only appeal from this decision is to Superior Court. Six copies of such appeal must be filed with the Unemployment Commission within 14 days of the date of this decision. Such appeal must state the grounds on which you assert that the decision is incorrect.

MEMORANDUM

The question raised by counsel as to whether due process of law was denied to the claimant by reason of his checks for unemployment benefits being withheld from him without a hearing, is one of deep interest. Notice has been taken of the policy and practice of the Unemployment Compensation Department as being reasonably calculated to ensure payment of benefits when due. Attention should be given to the phrase *any week* with respect to (Section 31-325) Connecticut General Statutes. Benefits are paid or denied based on what happens during a given week. If a claimant has not met the benefits eligibility conditions, benefits are not due. Only after the week has elapsed can a decision on entitlement for such week be made. The Department takes pains and expends time and energy to inform all claimants of what their rights and responsibilities are under the Law. As to the claimant's contention that he was not heard, he is a college graduate and if he did not understand what the examiner said to him on four different occasions, he was not paying attention.

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

AMENDED COMPLAINT

Introduction

Plaintiffs bring this suit to challenge several aspects of Connecticut's unemployment compensation procedures. First, plaintiffs challenge Connecticut's policy of terminating, withholding, or suspending unemployment benefits of persons who have been determined eligible and subsequently ineligible pursuant to an administrative decision without a prior hearing which meets the due process requirements set forth in *Goldberg v. Kelly*, 397 U.S. 254. Plaintiffs maintain that this policy, authorized by Conn. Gen. Stats. §§31-241 and 31-243 denies plaintiffs due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution and further violates the "payment when due" provision of the Social Security Act, 42 U.S.C. §503 (a)(1). Second, plaintiffs challenge the "work effort" provisions of Conn. Gen. Stats. §§31-235(a) and 31-236(1) and defendant's implementation of said statutes on the ground that these provisions, as enacted and as applied to plaintiffs and others similarly situated, are unconstitutionally vague, have operated to deny plaintiffs unemployment benefits without due process of law and as enacted and applied conflict with §503(a)(1) of the Social Security Act.

1. Plaintiffs, individually and on behalf of all others similarly situated, bring this suit to redress the deprivation of rights secured by the Fourteenth Amendment to the United States Constitution and by the Social Security Act of 1935, as amended, 42 U.S.C. §501 et seq.

2. Plaintiffs seek a declaratory judgment declaring Conn. Gen. Stats. §§31-235(2), 31-236(1), 31-241 and 31-243 unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and invalid as inconsistent with the Social Security Act, 42 U.S.C. §503(a)(1). Plaintiffs further seek an injunction enjoining defendant from

suspending, terminating, or withholding the unemployment benefits of persons who have filed, or will file, valid initiating claims pursuant to Conn. Gen. Stats. §§31-230, 31-235(1)(3) and 31-241 without affording said persons a prior hearing which satisfies the due process requirement set forth in *Goldberg v. Kelly*. (Copies of Conn. Gen. Stats. §§31-230, 31-235, 31-236(1), 31-241 and 31-243 are attached to this Amended Complaint as Attachment A).

3. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1343.

4. Plaintiffs' action for injunctive and declaratory relief is brought pursuant to Title 42 U.S.C. §1983, 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

5. Plaintiffs bring this action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and all persons similarly situated. The members of this class are so numerous as to make joinder of all of them impractical. The class is composed of all present and future unemployed workers in Connecticut who have filed valid initiating claims for unemployment compensation benefits pursuant to Conn. Gen. Stats. §§31-230, 31-235(1)(3) and 31-241 and whose benefits have been or will be terminated, suspended, or withheld by defendant pursuant to Conn. Gen. Stats. §§31-241 and 31-243 without affording said persons a *Goldberg v. Kelly* prior hearing, excepting those persons who from time to time exhaust their entitlement to those benefits by virtue of the operation of Conn. Gen. Stats. §31-236. This class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties will fairly and adequately protect the interest of the class and; the defendant and his agents and employees have acted and refused to act on grounds generally applicable to the class thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

PARTIES

6. Plaintiff Larry Steinberg is a citizen of the United States and a resident of West Willington, Connecticut.

7. Plaintiff Cecil Paskewitz is a citizen of the United States and a resident of Somers, Connecticut.

8. Plaintiff Juan Miranda is a citizen of the United States and a resident of Bridgeport, Connecticut.

9. Plaintiff Delia Triana is a refugee from Cuba who has applied for permanent residency in the United States. She resides in Bridgeport, Connecticut.

10. Defendant Jack A. Fusari, sued in his individual and official capacity, is the Commissioner of Labor for the State of Connecticut. Under Connecticut General Statutes, §31-1, he is designated as the individual responsible for administering the Unemployment Compensation Act of the State of Connecticut.

11. Under the Connecticut Unemployment Compensation Statute, Conn. Gen. Stats. §31-222 et seq., an initial determination of eligibility is made after an unemployed claimant files an initiating claim and a claim examiner determines, pursuant to Conn. Gen. Stats. §31-241, that the claim is valid.

12. The statutory provisions relating to the initial determination of eligibility provide, in relevant part, as follows:

Conn. Gen. Stats. §31-230

> . . . . As used in this section an initiating claim shall be deemed valid if the claimant is unemployed and meets the requirements of subsections (1) and (3) of section 31-235.

Conn. Gen. Stats. §31-235 — *Benefits eligibility conditions; qualifications.*

> An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that:
>
> (1) he has made claim for benefits in accordance with the provisions of section 31-240 and has registered for work at the public employment bureau or other agency designated by the administrator within such time limits, with such frequency and in such manner as the administrator may prescribe, provided failure to comply with

this condition may be excused by the administrator upon a showing of good cause therefor; . . . . .

(3) he has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his current benefit year in an amount at least equal to thirty times his benefit rate for total unemployment, some part of which amount has been paid or was earned in at least two different calendar quarters of such base period.

Conn. Gen. Stats. §31-241 — *Initial determination*

The administrator, or a deputy or representative designated by him and herinafter referred to as an examiner, shall promptly examine the initiating claim and, on the basis of the facts found by him, shall determine whether or not such claim is valid and, if valid, the weekly amount of benefits payable and the maximum possible duration thereof.

13. After an initial determination of eligibility is made by defendant, the claimant customarily reports bi-weekly at his local unemployment compensation office to receive his benefit checks for the preceding two-week period.

14. Plaintiff Steinberg filed an initiating claim for unemployment benefits on or about April 17, 1971, was declared eligible and received weekly benefits through October 9, 1971.

15. On October 27, 1971, plaintiff Steinberg reported to the unemployment compensation office to receive his benefits for the weeks ending October 16 and 23, 1971. Following an informal discussion with an unemployment office "interviewer" in November, Mr. Steinberg was told he would not receive his unemployment checks.

16. On November 16, 1971 Steinberg received written notice that he was disqualified retroactive to October 10, 1971 for failure to be "available for work" and make "reasonable efforts to obtain work", as required by Conn. Gen. Stats. §31-235(2).

17. On November 5, 1971 plaintiff Steinberg appealed the termination of benefits. A hearing was held before an ap-

peals Commissioner on January 3, 1972 and the Commissioner subsequently upheld the termination of benefits.

18. Plaintiff Paskewitz filed an initiating claim for unemployment compensation benefits in August, 1971, was declared eligible and received benefits until February, 1972.

19. On February 16, 1972, Paskewitz's application for extended benefits pursuant to Conn. Gen. Stats. §31-232(b) was approved.

20. On March 2, 1972 plaintiff Paskewitz went to the Enfield Unemployment office to collect his first checks for Extended Benefits and was told that his payments were being suspended or terminated as the Unemployment Compensation Department had made an error in the determination of his eligibility. When Mr. Paskewitz inquired as to the specific reason for this action, he was told that his case was being "investigated".

21. Plaintiff Paskewitz appealed this termination on March 2, 1972. A hearing was scheduled in August, 1972 but was postponed at the request of Mr. Paskewitz's attorney. The appeal was heard on October 11, 1972, but to date, the Commissioner has not rendered a decision.

22. Plaintiff Triana filed an initiating claim for unemployment benefits on or about June 18, 1972, was determined eligible, and received weekly benefits through July 8, 1972.

23. On July 27, 1972, Mrs. Triana went to the Bridgeport Unemployment Compensation office to receive her benefits checks for the weeks ending July 15 and July 22, 1972.

24. After speaking briefly with an unemployment office "interviewer", Mrs. Triana was told that her benefits were being terminated indefinitely, retroactive to July 9, 1972, because she had not made "reasonable efforts to find work". (Plaintiff Triana's affidavit, dated September 12, 1972, already on file with this Court, is hereby incorporated as if fully pleaded herein).

25. On or about August 7, 1972, Triana filed an appeal on the termination of benefits. Because of the large backlog of pending appeals, totaling 6,100 state-wide as of August 31, 1972,

her appeal was not heard by an unemployment Commissioner until October 27, 1972.

26. On November 10, 1972, the Commissioner rendered his decision. The Commissioner's findings of fact included a finding that Mrs. Triana "was desperate for work and sought all types of work in the local labor market." The Commissioner's decision was that Mrs. Triana was incorrectly declared ineligible for the four weeks between July 29, 1972 and August 18, 1972 and that she was entitled to benefits for that period. (A copy of the Commissioner's decision is attached to this Amended Complaint as Attachment B).

27. Plaintiff Triana was scheduled to receive the wrongfully withheld benefits on November 27, 1972 but on that date was told that release of the checks had not yet been approved.

28. Plaintiff Miranda filed an initiating claim for unemployment benefits on July 2, 1972, was determined eligible and received benefits through August 12, 1972.

29. On August 27, 1972, Mr. Miranda reported to the Bridgeport Unemployment Compensation office to receive his benefit checks for the weeks ending August 19 and 26, 1972. Following a brief discussion with a department examiner, Mr. Miranda was told that he would no longer receive benefits because he had not made "reasonable efforts to find work". (Plaintiff Miranda's affidavits, dated September 6, 1972 and October 18, 1972 which are already on file with this Court, are hereby incorporated as if fully pleaded herein.)

30. On September 11, 1972, Miranda received written notice that all claims from August 13, 1972 were disapproved and on September 13, 1972 Miranda filed an appeal.

31. A fact-finding appeal hearing was held before an Unemployment Commissioner on October 17, 1972.

32. On October 24, 1972 the Commissioner rendered his written deicision and held that during all periods in question Mr. Miranda had "demonstrated a sincere effort to seek employment within the meaning of the Unemployment Compensation Act" and therefore was eligible for benefits withheld for

the eight week period from August 13, 1972 to the date of the appeal hearing. (A copy of the appeal decision is attached to the Amended Complaint as Attachment C.)

33. On November 23, 1972, plaintiff Miranda received the unemployment compensation benefits which had been wrongfully withheld from him.

34. The weekly benefits of each plaintiff were terminated, suspended, or withheld without a prior due process hearing pursuant to defendant's statewide policy, authorized by Conn. Gen. Stats. §31-241 which provides in pertinent part as follows:

> The administrator, or deputy or representative desig-signated by him and hereinafter referred to as an examiner shall promptly examine each claim for a benefit payment for a week of unemployment and, on the basis of facts found by him, shall determine whether or not the claimant is eligible to receive such benefit payment for such week and the amount of benefits payable for such week. . . . . Such decision shall be final and benefits shall be paid or denied in accordance therewith unless the claimant . . . . within seven days after such notification was mailed to his last known address . . . . files an appeal from such decision and applies for a hearing.

35. Plaintiffs Steinberg, Triana and Miranda were denied unemployment benefits for allegedly failing to comply with the statutory "work effort" requirements as set forth in Conn. Gen. Stats. §§31-235(2) and 31-236(1):

> §31-235(2)
> An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that . . .
>
> (2) he is physically and mentally able to work and is available for work and has been and is making reasonable efforts to obtain work.
>
> §31-236 — Disqualifications
> "An individual shall be ineligible for benefits (1) If the administrator finds that he has failed without sufficient cause either to apply for available, suitable work when

directed so to do by the public employment bureau or the administrator, or to accept suitable employment when offered him by the public employment bureau or by an employer, such ineligibility to continue for the week in which such failure occurred and for the next four following weeks. Suitable work shall mean either employment in his usual occupation or field or other work for which he is reasonably fitted, provided such work is within a reasonable distance of his residence, and, in determinating whether or not any work is suitable for an individual, the administrator may consider the degree of risk involved in his health, safety and morals, his physical fitness and prior training and experience, his skills, his previous wage level and his length of unemployment.

36. Upon information and belief defendant has no written standards or regulations with respect to Conn. Gen. Stats. §§31-235 (2) and 31-236(1) and the application of said statutes is left to the subjective determinations of numerous interview and claim examiners employed by defendant.

37. The lack of written standards and regulations with respect to Conn. Gen. Stats. §§31-235(2) and 31-236(1) make it difficult for claimants who are adversely affected by the operation of said statutes to receive a meaningful, due process appeal hearing before an Unemployment Commissioner.

38. Conn. Gen. Stats. §§31-235(2) and 31-236(1) are vague and arbitrary and, as enacted and as applied to Plaintiffs and members of their class, have operated to deprive them of property without due process of law.

39. Defendant's policy and practice of terminating or withholding claimants' unemployment benefits without a prior due process hearing and the overburdened appeal process, operates to deny plaintiffs and members of their class their Fourteenth Amendment right to due process of law. Said policy and practice is also in conflict with the Social Security Act, 42 U.S.C. §503(a)(1) which provides in relevant part:

> The Secretary of Labor shall make no certification of payment to any State unless he finds the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provisions for

> (1) such methods of administration as are *reasonably calculated to ensure full payment of unemployment compensation when due.* (Emphasis added).

40. Plaintiff and members of their class have suffered and will continue to suffer irreparable injury until the Defendant's above described practices and the Connecticut Statutes which authorize said practices are declared illegal and unconstitutional and are enjoined by this Court.

41. Plaintiffs and their class have no adequate administrative remedy or remedy at law.

WHEREFORE,

Plaintiffs on behalf of themselves and all others similarly situated respectfully pray that this Court:

1. Assume jurisdiction of this case and set this case down for a prompt hearing;

2. Certify, pursuant to Rule 23(a) and 23(b)(2) F.R.C.P. that this case may proceed as a class action;

3. Enter a final judgment declaring that:

(a) Defendant's practice of terminating, suspending, withholding or reducing unemployment compensation benefits of plaintiffs and members of their class who have been determined eligible and subsequently ineligible pursuant to an administrative decision without a *Goldberg v. Kelly* prior hearing, is invalid under the Social Security Act 42 U.S.C. §503(a)(1) and the Due Process Clause of the Fourteenth Amendment;

(b) Conn. Gen. Stats. §§31-241 and 31-243, insofar as they authorize defendant's practice of terminating, suspending, withholding or reducing unemployment benefits without a *Goldberg v. Kelly* prior hearing, conflict with the Social Security Act 42 U.S.C. §503(a)(1) and the Due Process Clause of the Fourteenth Amendment and are, therefore, invalid.

(c) Conn. Gen. Stats. §31-235(2) insofar as it provides that:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that . . .

> (2) he is . . . available for work and has been and is making reasonable efforts to obtain work.

conflicts with §503(a)(1) of the Social Security Act and the Due Process Clause of the Fourteenth Amendment and is therefore, invalid.

(d) Conn. Gen. Stats. §31-236(1) insofar as it provides that:

> §31-236 Disqualifications
>
> An individual shall be ineligible for benefits (1) If the administrator finds that he has failed without sufficient cause either to apply for available, suitable work when directed so to do by the public employment bureau or the administrator, or to accept suitable employment when offered him by the public employment bureau or by an employer, such ineligibility to continue for the week in which such failure occurred and for the next four following weeks. Suitable work shall mean either employment in his usual occupation or field or other work for which he is reasonably fitted, provided such work is within a reasonable distance of his residence and, in determining whether or not any work is suitable for an individual, the administrator may consider the degree of risk involved in his health, safety and morals, his physical fitness and prior training and experience, his skills, his previous wage level and his length of unemployment.

conflicts with §503(a)(1) of the Social Security Act and the Due Process Clause of the Fourteenth Amendment and is, therefore, invalid.

4. Issue a permanent injunction pursuant to Rule 65 F.R.C.P. enjoining defendant, his successors in office, agents, employees and all other persons acting in concert with them from:

(a) Suspending, withholding, terminating or reducing the unemployment benefits of plaintiffs and members of their class who have been determined eligible and subsequently ineligible pursuant to an administrative decision without a *Goldberg v. Kelly* prior hearing, and

(b) Suspending, withholding, terminating or reducing the unemployment benefits of plaintiffs and members of their class on the basis of Conn. Gen. Stats. §§31-235(2) and 31-236(1).

5. Allow plaintiffs their costs herein and grant such other and further relief as may be just and proper.

(Signatures of Counsel Omitted in Printing)

ATTACHMENT A

§ 31-230. Benefit year and base period

An individual's benefit year shall commence with the beginning of the week with respect to which he has filed a valid initiating claim and shall continue for the remainder of the calendar quarter in which such week begins and for the next three calendar quarters, plus the remainder of any uncompleted calendar week at the end of such period. The base period of a benefit year shall be the first four of the five most recently completed calendar quarters prior to such benefit year. As used in this section, an initiating claim shall be deemed valid if the claimant is unemployed and meets the requirements of subsections (1) and (3) of section 31-235. The base period of an individual's benefit year shall include wages paid by any nonprofit organization electing reimbursement in lieu of contributions, or by the state and by any town, city or other political or governmental subdivision of or in this state or of any municipality to such person with respect to whom such employer is subject to the provisions of this chapter.

(1949 Rev., § 7503; 1949, Supp. § 631a; 1953, Supp. § 2308c; 1955, Supp. § 3068d; 1969, P.A. 700, § 4; 1971, P.A. 835, § 12, eff. July 1, 1971.)

§ 31-235. Benefit eligibility conditions; qualifications

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that

(1) he has made claim for benefits in accordance with the provisions of section 31-240 and has registered for work at the public employment bureau or other agency designated by the administrator within such time limits, with such frequency and in such manner as the administrator may prescribe, provided failure to comply with this condition may be excused by the administrator upon a showing of good cause therefor;

(2) he is physically and mentally able to work and is available for work and has been and is making reasonable efforts to obtain work.

(3) he has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his current benefit year in an amount at least equal to thirty times his benefit rate for total unemployment, some part of which amount has been paid or was earned in at least two different calendar quarters of such base period.

(1949 Rev., § 7507; 1953, Supp. § 2312c; 1955, Supp. § 3072d; 1965, P.A. 550, § 4, eff. July 8, 1965; 1967, P.A. 790, § 13; 1967 Public Act 790, § 23, eff. July 1, 1967; 1971, P.A. 835, § 14, eff. July 1, 1971.)

§ 31-236. Disqualifications

An individual shall be ineligible for benefits

(1) If the administrator finds that he has failed without sufficient cause either to apply for available, suitable work when directed so to do by the public employment bureau or the administrator, or to accept suitable employment when offered him by the public employment bureau or by an employer, such ineligibility to continue for the week in which such failure occurred and for the next four following weeks. Suitable work shall mean either employment in his usual occupation or field or other work for which he is reasonably fitted, provided such work is within a reasonable distance of his residence, and, in determining whether or not any work is suitable for an individual, the administrator may consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training and experience, his skills, his previous wage level and his length of unemployment, but, notwithstanding any other provision of this chapter, no work shall be deemed suitable nor shall benefits be denied under this chapter to any otherwise eligible individual for refusing to accept work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(b) if the wages, hours or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(d) if the position offered is for work which commences or ends between the hours of one and six o'clock in the morning if the administrator finds that such work would constitute a high degree of risk to the health, safety or morals of the individual, or would be beyond the physical capabilities or fitness of the individual or there is no suitable transportation available from the claimant's home to or from his place of employment.

§ 31-241. Initial determination

The administrator, or a deputy or representative designated by him and hereinafter referred to as an examiner, shall promptly examine the initiating claim and, on the basis of the facts found by him, shall determine whether or not such claim is valid and, if valid, the weekly amount of benefits payable and the maximum possible duration thereof. He shall promptly notify the claimant of the decision and the reasons therefor, which notification shall set forth the provision of this section for appeal. The administrator, or deputy or representative designated by him and hereinafter referred to as an examiner, shall promptly examine each claim for a benefit payment for a week of unemployment and, on the basis of the facts found by him, shall determine whether or not the claimant is eligible to receive such benefit payment for such week and the amount of benefits payable for such week. He shall promptly notify the claimant, and the employers against whose merit rating accounts compensable separations due to any benefits awarded by the decision might be charged, of the decision and the reasons therefor, which notification shall set forth the provision of this section for appeal, provided any employer who claims that the claimant is ineligible for benefits because his unemployment is due to the existence of a labor dispute at such employer's factory, establishment or other premises, shall be notified of the decision and the reasons therefor, whether or not a compensable separation due to benefits awarded by the decision might be charged against such employer's merit rating account. The state and any political subdivision subject to this chapter shall be notified of any decision on a claim in which it is designated as a base period employer. Such decision shall be final and benefits shall be paid or denied in accordance therewith unless the claimant or any of such employers, within seven days after such notification

was mailed to his last-known address, exclusive of any Sundays or holidays falling within such period, files an appeal from such decision and applies for a hearing. If the last day for filing an appeal falls on any day when the offices of the employment security division are not open for business, such last day shall be extended to the next business day. Where the administrator or examiner has determined that the claimant is eligible for benefits and the employer has initiated an appeal under the provisions of section 31-242, a hearing shall be forthwith granted upon the application of the claimant to the administrator or examiner concerned for the payment of benefits during the pendency of the appeal before the unemployment compensation commissioner. For good cause shown the administrator or examiner may allow the payment of benefits, as long as the claimant shall be otherwise eligible therefor, during the pendency of the appeal before the unemployment compensation commissioner, and until such time as the said commissioner has rendered his decision on appeal. No examiner shall participate in any case in which he is an interested party. Any person who has filed a claim for benefits pursuant to an agreement entered into by the administrator with the proper agency under the laws of the United States, whereby the administrator makes payment of unemployment compensation out of funds supplied by the United States, may in like manner file an appeal from the decision on such claim and apply for a hearing, and the United States or the agency thereof which had employed such person may in like manner appeal from the decision on such claim and apply for a hearing.

(1949 Rev., § 7513; 1955, Supp. § 3077d; 1957, P.A. 596, § 5; 1965, P.A. 347; 1967, P.A. 790, § 15; 1971, P.A. 835, § 22, eff. July 1, 1971.)

§ 31-243. Continuous jurisdiction

Jurisdiction over benefits shall be continuous but the initiating of a valid appeal under section 31-242 or the pendency of valid appellate proceedings under section 31-249 shall, if the appellate tribunal has taken jurisdiction, stay any proceeding hereunder, but only in respect to the same period and the same parties, but shall not cause the cessation of payment of benefits as provided by section 31-242. Upon his own initiative, or upon application of any party in interest, on the ground of a change in conditions, the administrator, or the examiner designated by

him, may, at any time within six months after the date of the original decision, or within such other time limits as may be applicable under section 31-273, review an award of benefits or the denial of a claim therefor, in accordance with the procedure prescribed in respect to claims, and may issue a new decision, which may award, terminate, continue, increase or decrease such benefits. Such new decision shall be appealable under the provisions of section 31-242 within the time prescribed in section 31-241, and where the claimant has been free from fault, a redetermination or new decision shall not affect benefits paid under a prior order.

(1949 Rev., § 7515, 1971, P.A. 835, § 24, eff. July 1, 1971.)

ATTACHMENT B

Case No. 2671-D-72

Delia F. Triana
153 Lewis Street
Bridgeport, Connecticut
SS No. 048-48-0259

vs

The Administrator
Unemployment
Compensation Act

UNEMPLOYMENT COMMISSION
285 Golden Hill Street
Bridgeport, Connecticut 06604

LOCAL OFFICE NO. 2

Mailing Date
November 10, 1972

APPEARANCES: The claimant, together with Mrs. Margarita Torres, interpreter, and Attorney John Creane, from Legal Services. Mr. John Blair, Fact Finding Examiner, for the Administrator.

The claimant filed a Total Additional Claim for benefits as of June 18, 1972. On July 27, 1972, the Administrator disapproved all claims from July 9, 1972 to Indefinite. Claimant's appeal dated August 7, 1972, was heard in Bridgeport on October 27, 1972.

FINDING OF FACTS

1. Claimant is forty-five years of age, married, four children, ages eight, ten, thirteen, and fifteen.

2. Claimant is not employed at present, and is available for full-time work on all shifts.

3. Claimant uses public transportation or walks to and from place of employment.

4. Claimant's husband has a car, worked three to eleven shift.

5. Claimant has a language barrier and uses her fifteen year old son as an interpreter when seeking employment.

6. Unemployment Rules and Regulations were explained to claimant at interview with Connecticut State Employment Service, by Spanish Interpreter.

7. Claimant sought employment in the local labor market, submitted lists of names of prospective employers whom she had contacted.

8. Claimant was desperate for work, sought all types of work in the local labor market.

DECISION

To be eligible for benefits under the Unemployment Compensation Act, an individual must make a sincere and honest effort to obtain employment. Since the efforts of the claimant for the weeks ending July 15, 1972 and July 22, 1972 were negligible she was correctly declared ineligible for benefits. Since the efforts of the claimant during the four weeks following -- weeks ending July 29, 1972 to August 18, 1972, had greatly improved, and as she had exposed herself to the labor market, she was incorrectly declared ineligible for this four week period.

The decision of the Administrator for the weeks ending July 15, 1972 and July 22, 1972 is affirmed. For the weeks ending July 29, 1972 to August 19, 1972 the decision of the Administrator in denying benefits is reversed.

TIMOTHY J. LOUGHLIN
Commissioner

The only appeal from this decision is to the Superior Court and such appeal must be taken within fourteen days from the date of this decision. Six copies of this appeal stating the grounds on which you assert this decision is incorrect must be filed in this office within the aforesaid fourteen days.

ATTACHMENT C

Case No. 3323-B-72

Juan Miranda
749 Hallet Street
Bridgeport, Connecticut
SS No. 581-64-7882

vs.

The Administrator
Unemployment
Compensation Act

UNEMPLOYMENT COMMISSION
285 Golden Hill Street
Bridgeport, Connecticut

Local Office No. 2

Mailing Date
October 24, 1972.

APPEARANCES: The claimant, together with Attorney John Creane, Esq. Counsel

The claimant filed a Total claim as of July 2, 1972. On September 11, 1972 the Administrator disapproved all claims from August 13, 1972. Claimant's appeal dated September 13, 1972, was heard in Bridgeport on October 17, 1972.

FINDING OF FACTS

1. Claimant is a married man, aged thirty-eight, with two children.

2. Claimant was last employed at the Felix Brass Company for a period of one year and his date of termination was June 29, 1972.

3. Claimant was disqualified by the Administrator on the issue of effort.

4. During the eight week period of time in question, the claimant has sought employment at least twenty-four places within the labor market.

DECISION

The Unemployment Compensation Law provides that to be available for work within the meaning of the unemployment

compensation statute, a claimant must be ready, able and willing to accept suitable employment and must expose himself unequivocally to the labor market.

The claimant, during the period of time in question, has demonstrated a sincere effort to seek employment within the meaning of the Unemployment Compensation Law and is eligible for benefits for the period of time in question.

The decision of the Administrator in denying benefits is reversed.

PETER J. IASSOGNA, *Commissioner*
Fourth District

The only appeal from this decision is to the Superior Court and such appeal must be taken within 14 days from the date of this decision. Six copies of this appeal stating the grounds on which you assert this decision is incorrect, must be filed in this office within the aforesaid fourteen days.

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

ANSWER TO AMENDED COMPLAINT

No answer is made to the "Introduction" as no answer seems to be necessary.

1. The defendant denies that part of paragraph 1 which alleges or implies that this is a class suit. The rest of said paragraph is admitted.

2. Although paragraph 2 seems to be a prayer for relief, it is admitted solely to the extent that it alleges what the plaintiffs are seeking.

3. Paragraph 3 is denied.

4. As to paragraphs 4 through 9 inclusive, this defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof.

5. So much of paragraph 10 as alleges that the defendant was sued in his individual capacity is denied. The rest of said paragraph is admitted.

6. Paragraph 11 is denied. (An initial determination of eligibility is made after a claim is determined to be valid.)

7. Paragraph 12 is admitted except for the implication that the statutes cited are the sole provisions relating to the initial determination of eligibility; said implication is denied.

8. Paragraph 13 is admitted except for the word "customarily" which is denied.

9. Paragraph 14 is admitted.

10. The first sentence of Paragraph 15 is admitted. As for the rest and remainder of said paragraph it is denied.

11. The date of November 16, 1971 cited in paragraph 16 is denied. The rest of said paragraph is admitted.

12. The date of January 3, 1972 cited in paragraph 17 is denied. The rest of said paragraph is admitted.

13. Paragraphs 18 and 19 are admitted.

14. As to paragraph 20, the defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof.

15. Paragraph 21 is admitted.

16. As to paragraphs 22 through 24 inclusive, this defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof. Paragraphs 5 and 7 of the plaintiff Triana's affidavit of September 12, 1972, cited in paragraph 24 of the Amended Complaint, are denied. As to the rest of the affidavit, the defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof.

17. Paragraphs 25 and 26 are admitted. Any implication in paragraph 26 to the effect that the Commissioner's Decision was completely in Mrs. Triana's favor is denied.

18. The word "wrongfully" in paragraph 27 is denied. As to the rest of said paragraph, the defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof.

19. Paragraph 28 is admitted.

20. As to the first sentence in Paragraph 29, the defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof. The rest of said paragraph is denied, as is paragraphs 5, 10 and 11 of the plaintiff Miranda's affidavit of September 6, 1972 and paragraphs 3 and 4 of his affidavit of October 18, 1972. As to the rest and remainder of said paragraphs of the affidavits, the defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof.

21. Paragraphs 30, 31 and 32 are admitted.

22. As to paragraph 33, the defendant has no knowledge or information, and, therefore, leaves the plaintiffs to their proof.

23. So much of paragraph 34 as states "without a prior due process hearing" is denied. The rest of said paragraph is admitted. Any implication in said paragraph to the effect that Section 31-241 Conn. Gen. Stats. is the only statutory basis for the defendant's decision to terminate, suspend, or withhold benefit payments is denied.

24. The word "allegedly" cited in paragraph 35 is denied. The rest of said paragraph is admitted. Any implication in said paragraph to the effect that the quoted provisions of Section 31-236 Conn. Gen. Stats. are the only statutory requirements pertinent to the denial of benefits to the plaintiffs Steinberg, Triana and Miranda is denied.

25. Paragraphs 36, through 41 inclusive are denied.

(Signature of Counsel and Certification Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

STIPULATION TO FACTS

The undersigned parties stipulate and agree to the following facts for the purpose of aiding the court in deciding the above-captioned case on the merits.

1. Unemployment insurance benefits in Connecticut are paid entirely out of a trust fund maintained solely by contributions, interest and penalties paid by employers in Connecticut. If the Connecticut program is in compliance with provisions of Federal law, the Federal government pays the costs of administration. 42 U.S.C. Section 502, 503.

THE DEPARTMENT'S PROCEDURES FOR INITIAL DETERMINATION OF ELIGIBILITY

2. In order for a claimant to be found initially entitled to unemployment compensation benefits, he must meet the requirements of various sections of Chapter 567 of the Connecticut General Statutes. Connecticut General Statutes, Section 31-241 provides:

> *Initial determination:*
> The administrator, or deputy or representative designated by him and hereinafter referred to as an examiner, shall promptly examine the initiating claim and, on the basis of the facts found by him, shall determine whether or not such claim is valid and, if valid, the weekly amount of benefits payable and the maximum possible duration thereof.

A valid initiating claim is defined in Connecticut General Statutes, Sections 31-230 and 31-325(1)(3) as follows:

> *Section 31-230.*
> . . . As used in this section, an initiating claim shall be deemed valid if the claimant is unemployed and meets the requirements of sub-section (1) and (3) of section 31-235.

Section 31-235. Benefits Eligibility Conditions; Qualifications;

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that: (1) he has made claim for benefits in accordance with the provisions of Section 31-240 and has registered for work at the Public Employment Bureau or other agency designated by the Administrator within such time limits, with such frequency and in such manner as the Administrator may prescribe, provided failure to comply with this condition may be excused by the administrator upon a showing of a good cause thereof; . . . (3) he has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his current benefit year in an amount at least equal to thirty times his benefit rate for total unemployment, some part of which amount has been paid or was earned in at least two different calendar quarters of such base period.

3. In addition to the above provisions, a claimant may be disqualified for varying lengths of time at the initial stage under the disqualification provisions of Connecticut General Statutes, Section 31-236. The disqualifications include but are not limited to, (1) leaving suitable work voluntarily and without sufficient cause connected with work; (2) being discharged for willful misconduct; (3) leaving employment to attend a school, college, university as a regularly enrolled student; (4) receiving benefits in a prior benefit year and not again becoming employed and paid wages since the commencement of said prior benefit year in an amount equal to at least one-hundred fifty dollars ($150.00) and; (5) participating or supporting a strike which leads to unemployment.

4. When a claimant applies for unemployment compensation insurance benefits, he files a form entitled "New Claim for Unemployment Compensation" (Form U.C.-15) and is interviewed by an employee of the department. This interview is necessary to determine, in part, if the claim is a "valid initiating claim".

5. A check of the claimant's wage credits is then made by the department prior to an initial determination of eligibility.

The claimant is assigned a day of the week, based upon the claimant's social security number, to report to the Unemployment Compensation Office; when he does so the department, if it has found him to be eligible, then issues a "claim for first benefit payment" which is signed by the claimant and which authorizes the first payment of benefits to the claimant.

CONTINUED ELIGIBILITY PROCEDURE

6. Thereafter, claimants who have been initially determined eligible report bi-weekly to the local unemployment compensation office to file a "Continued Claim for Unemployment Compensation" (U.C.-46). On the back of this U.C.-46 form the claimant declares under oath that during the calendar weeks for which he is claiming benefits he has been able to work, available for work and made reasonable efforts to find work, was not engaged in self-employment; did not receive other states or federal unemployment benefits, and; did not attend school during the calendar weeks for which he is claiming benefits.

7. Prior to signing any statements that he had made reasonable efforts to obtain work and has been available for work, a claimant, if department policy has been followed in his case, has been supplied with a booklet entitled "Your Rights and Responsibilities Under The Connecticut Unemployment Law." In this booklet, the terms "available for work", and "reasonable efforts to find work" are defined on page 21 as follows:

> "AVAILABLE FOR WORK. You must be ready, willing and able to take any suitable job on a full-time basis.
>
> "REASONABLE EFFORTS TO FIND WORK". Your efforts to get a job must be the efforts which a person out of a job would make if he is sincerely looking for work.

8. Since June, 1972, claimants have been required to submit a "Continued Claim Work Effort Information Form", (Form U.C.-45) when filing their claim for bi-weekly benefits. This form is submitted in addition to the sworn statement on Form U.C.-46 concerning reasonable efforts to find work.

9. At each bi-weekly visit to the unemployment compensation office, the claimant presents completed forms U.C.-45 and U.C.-46 in the Claims Line to a department employee and is routinely given his benefit checks for the two-week period unless the department employee raises an issue of disqualification.

10. If a question of possible disqualification arises the claimant is not given his benefit checks but instead is referred to another line for a "seated interview".

11. After reaching the head of the "seated interview" line, the claimant is interviewed by a claims examiner. The claims examiner ascertains from the claimant facts as to possible disqualification. If the claims examiner determines that the claimant is eligible, the claimant is referred back to the Claims Line to pick up his checks. If however, the claims examiner determines that he has not met the statutory requirements, the claimant does not receive his benefit checks and is told that he will receive written notification of the department's decision concerning his eligibility for the weeks in question. This notice is a letter stating the reason for the non-payment citing a statutory provision therefor, and informing the claimant of his right to appeal. These letters are sent out under the signature of the office manager.

12. If a question arises during the "seated interview" which involves third party information, the department employee will make an attempt to contact the third party, generally an employer, while the claimant is present and will take into consideration the third party information in reaching a decision. However, if the third person cannot be reached at that time, the claims examiner will proceed to make a determination as to whether the person will receive benefits for the two-week period.

13. By an Interoffice Memorandum dated April 2, 1973, procedures were established whereby the Employment Service office employee who has stated, by memorandum, that a claimant has refused to accept a job referral, is required to be present when the claimant comes in for his interview. The claimant thus has the opportunity to confront this person and respond to his statements concerning the alleged refusal.

14. The most common reason for denying benefits to a claimant who has been initially determined eligible to receive benefits is an alleged failure to comply with the "reasonable effort" and "able and available" section of Connecticut General Statutes, Section 31-235(2). These reasons generally account for between 60 and 70 percent of the denial of benefits resulting from "seated interviews". Other common reasons for denial of benefits on a continuing eligibility claim include refusal of a suitable job offer and disqualifying or deductible income.

15. Eligibility is determined on week-to-week basis even though the claimant may visit the office only bi-weekly. When a claimant is denied benefits for one or both weeks in a two-week claims period, the Defendant's written policy is that the claimant will remain eligible for subsequent time periods so long as he satisfies eligibility requirements for those periods. In actual practice, however, some claimants who were found ineligible for one claims period and who filed appeals to the Unemployment Compensation Commission were denied benefits for later periods on the grounds that "they have appeals pending", in violation of the department's written policy.

PARTIES

16. Plaintiff Delia Triana filed a valid additional claim for unemployment compensation benefits on June 18, 1972 in Bridgeport, Connecticut, was determined eligible, and received weekly benefits through July 8, 1972.

17. On or about July 24, 1972, Mrs. Triana reported to the Bridgeport Unemployment Compensation office to file for and receive her benefit checks for the weeks ending July 15th, and July 22nd, 1972.

18. On that day, Mrs. Triana reported to the Claims Line to pick up her checks. After submitting her U.C.-45 and U.C.-46 forms, she was told by a department employee that there was a question as to her eligibility for the two-week period and that she should get in a different line for a "seated interview".

19. After waiting in the "seated interview" line, Mrs. Triana spoke with a department claims examiner who discussed

her efforts to obtain work during the two-week period ending July 22, 1972.

20. The claims examiner, determined that she had failed to comply with Connecticut General Statutes, Section 31-235(2) which requires making "reasonable efforts to obtain work" and she did not receive her checks for the weeks ending July 15th and July 22nd, 1972 at that time. At two subsequent bi-weekly appointments at the Bridgeport Unemployment office, Mrs. Triana was disqualified from receiving benefits for the four-week period between July 29, 1972 and August 18, 1972 on the grounds that she had failed to make "reasonable efforts to obtain work".

21. On or about July 27, 1972, written notice was sent by the Department to Mrs. Triana in a letter signed by Mrs. Smarz, the manager of the Bridgeport Unemployment Compensation office, informing her that she was disqualified indefinitely from July 9, 1972 because she failed to satisfy the "reasonable efforts to obtain work" section of Connecticut General Statutes, Section 31-235(2). On or about August 7, 1972, Mrs. Triana filed an appeal on the termination of her benefits. Because of a large backlog of pending appeals, totaling 6,100 state-wide as of August 31, 1972, her appeal was not heard by an Unemployment Commissioner until October 27, 1972.

22. On November 10, 1972, the Commissioner rendered his decision on Mrs. Triana's appeal. The Commissioner's findings as fact included the finding that Mrs. Triana "was desperate for work and sought all types of work in the local labor market". The Commissioner's decision was that Mrs. Triana was correctly denied benefits for the first two weeks in question and was incorrectly declared ineligible for the four weeks between July 29, 1972 and August 18, 1972, and that she was entitled to benefits for the latter period. She was paid accordingly and neither Mrs. Triana nor the Department of Labor appealed the Commissioner's decision to Superior Court.

23. Plaintiff Juan Miranda filed an initiating claim for unemployment benefits effective July 2, 1972 in Bridgeport, Connecticut, was determined eligible and received benefits through August 12, 1972. On or about August 30, 1972, Mr. Miranda reported to the Bridgeport Unemployment Compensa-

tion office to receive his benefit checks for the weeks ending August 19th and 26th, 1972.

24. On that day, Mr. Miranda went to the Claims Line to pick up his checks but after showing his U.C.-45 and U.C.-46 forms he was told by a department employee that there was a question as to his eligibility for the two-week period and that he should get in a different line for a "seated interview".

25. After waiting in the "seated interview" line, Mr. Miranda spoke with a department claims examiner who discussed Mr. Miranda's efforts to obtain work during the two-week period ending August 26, 1972.

26. The claims examiner determined that he had failed to make "reasonable efforts to obtain work" and therefore failed to satisfy the statutory requirement of Connecticut General Statutes, Section 31-235(2), and he did not receive his checks for the weeks ending August 19, and August 26, 1972 at that time.

27. On September 11, 1972, written notice was mailed from the Department, signed by Mrs. Smarz, the manager of the Bridgeport Unemployment Compensation office, that all claims from August 13, 1972 were disapproved and on September 13, 1972 Mr. Miranda filed an appeal to the Unemployment Commissioner.

28. Said appeal was heard before an Unemployment Commissioner on October 17, 1972.

29. On October 24, 1972, the Commissioner rendered his decision and held that during all periods in question, Mr. Miranda had "demonstrated a sincere effort to seek employment within the meaning of the Unemployment Compensation Act" and therefore was eligible for benefits withheld for the eight-week period from August 13, 1972 to the date of the appeal hearing. The Department of Labor did not appeal this decision and Mr. Miranda subsequently received the eight-weeks of benefits.

30. Plaintiff Larry Steinberg filed a valid initiating claim for unemployment compensation benefits in Willimantic, Con-

necticut on or about April 17, 1971, was declared eligible and received weekly benefits through October 9, 1971. On October 27, 1971, Mr. Steinberg reported to the Willimantic Unemployment Compensation office to file for and receive his benefit checks for the weeks ending October 16, and October 23, 1971.

31. On that day he reported to the Claims Line to file for his benefits but was informed by a department employee that he should stand in a different line for a "seated interview". After discussing his efforts to obtain work with a Department claims examiner, Mr. Steinberg was informed orally that he would not receive his unemployment benefit checks for the weeks ending October 16, and October 23, 1971 because he had failed to use "sufficient efforts to obtain work".

32. On or about November 1, 1971, Plaintiff Steinberg received written notice from the Willimantic Unemployment Compensation office that he was disqualified retroactive to October 10, 1971 for failure to be "available for work" and failure to make "reasonable efforts to obtain work" as required by Connecticut General Statutes, Section 31-235(2).

33. On November 5, 1971, Plaintiff Steinberg appealed the termination of his benefits to the Unemployment Compensation Commission. On January 13, 1972 a hearing was held before an Unemployment Commissioner and on May 10, 1972 the decision upholding the termination of benefits by the unemployment compensation office was issued by the Commissioner. The Commissioner's finding as fact included the findings that Mr. Steinberg" . . . was given not one but several hearings on his benefit eligibility status . . .", that he ". . . had every opportunity to present information favorable to his version of the facts in his situation . . .", and that "On August 24, he was again seated and interviewed by an examiner who told him he must expend (sic) the scope of his efforts to find work, which up to that time had been mainly to telephone or go to Locals 37 and 424 of the Iron Workers Union". Mr. Steinberg did not appeal the Commissioner's decison to the Superior Court.

34. Plaintiff Cecil Paskewitz filed an initiating claim for unemployment compensation benefits on August 16, 1971, in Enfield, Connecticut. On or about October 14, 1971 he was declared eligible for benefits retroactive to August, 1971 and received weekly benefits until February, 1972.

35. On February 16, 1972, Mr. Paskewitz's application for extended benefits pursuant to Connecticut General Statutes, Section 31-232, was approved by the Enfield Unemployment Compensation office.

36. On March 2, 1972, Mr. Paskewitz went to the Enfield Unemployment office to collect his checks for extended benefits and was told by a department employee that he was no longer eligible and would not receive extended benefits.

37. Mr. Paskewitz appealed this termination of benefits on March 2, 1972. A hearing was scheduled in August, 1972 but was postponed at the request of Mr. Paskewitz's attorney. The appeal was heard on October 11, 1972, but to date, the Unemployment Commissioner has not rendered a decision on the appeal.

38. The weekly unemployment benefits of each Plaintiff were terminated or withheld pursuant to Defendant's state-wide procedure authorized by Connecticut General Statutes, Section 31-241 which provides in pertinent part as follows:

> The administrator, or deputy or representative designated by him and hereinafter referred to as an examiner, shall promptly examine each claim for a benefit payment for a week of unemployment and, on the basis of facts found by him, shall determine whether or not the claimant is eligible to receive such benefit payment for such week . . . Such decision shall be final and benefits shall be paid or denied in accordance therewith unless the claimant . . . within seven (7) days after such notification was mailed to his last known address . . . files an appeal from such decision and applies for a hearing.

39. The State of Connecticut does not presently participate in the Aid To Families With Dependent Children-Unemployed Parent Program. (AFDC-UP).

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IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

STIPULATION AS TO PLAINTIFFS' EXHIBITS

It is hereby stipulated by and between the parties that the Plaintiffs' exhibits Numbers 1 through 30 described in Plaintiffs' List of Exhibits, dated May 3, 1973, be admissible, saving any and all objections to relevancy.

It is further stipulated that xerographic copies of these exhibits may be submitted in place of the originals.

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IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

STIPULATION TO DEPOSITIONS

1. The undersigned parties stipulate and agree that the Deposition of Eleanor Smarz, (Plaintiffs' Exhibit 9.) February 8, 1973, and Timothy J. Loughlin (Plaintiffs' Exhibit 8.) February 8, 1973 reflect Department policy and are admissible as evidence in the above entitled case.

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Pl. Ex. 9

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LARRY STEINBERG, CECIL PASKEWITZ, DELIA TRIANA, and JUAN MIRANDA	)	CIVIL ACTION NO. 15,104
vs.	)	FEBRUARY 8, 1973
JACK A. FUSARI, Commissioner of Labor, The Administrator, The Unemployment Compensation Act, State of Connecticut	)	AT BRIDGEPORT

DEPOSITION OF ELEANOR H. SMARZ, MANAGER OF BRIDGEPORT UNEMPLOYMENT COMPENSATION OFFICE

APPEARANCES:

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Attorney for Defendant

[1]

.... Deposition of Eleanor H. Smarz, taken on behalf of the plaintiffs in the hereinbefore entitled action, pursuant to Rule 30 (a) and (b) (1) and Rule 30 (b) (4) of the Federal Rules of Civil Procedure. Plaintiffs' Motion For Leave To Take Depositions By Means Of A Tape Recorder was granted without objection January 15, 1973 by Judge Newman. The deposition was recorded simultaneously on two tape recorders and this verbatim transcript was typed by an employee of Bridgeport Legal Services, Inc., Margarita Torres, who was present at the taking of the deposition at the office of Bridgeport Legal Services, Inc 412 East Main Street, Bridgeport, Connecticut, commencing at 1:45 p.m. on Thursday, February 8, 1973.

OATH AND STIPULATIONS

MR. CREANE: The oath and deposition of Mrs. Smarz will be administered by agreement of the parties by Attorney Ira Horowitz, a Commissioner of the Superior Court.

MR. HOROWITZ: Raise your right hand: Do you swear that the statements you will give in this deposition are the truth, the whole truth and nothing but the truth, so help you God?

MRS. SMARZ: I do.

MR. CREANE: The customary stipulations, which I'll read into the record, have been agreed to by the parties.

[2]

S T I P U L A T I O N S

It is hereby stipulated and agreed by and among counsel for the respective parties that all formalities in connection with the taking of this deposition, including time, place, sufficiency of notice, and the authority of the officer before whom it is being taken may be and hereby are waived;

It is further stipulated and agreed that objections other than as to form are reserved to the time of trial;

It is further stipulated and agreed that the reading and signing of said deposition by the witness is hereby waived.

MR. CREANE: (directed to Mr. Wasik) The initial questions will be asked by Ray and then I'll have some questions and then, of course, you have the right to cross-examine when we're through.

DIRECT EXAMINATION BY MR. KELLY:

Q Mrs. Smarz, will you give us your full name and address, please?

A Miss Eleanor Helen Smarz, 120 Cliff Street, Shelton, Connecticut.

Q And would you tell us your job and the title that you hold?

A I'm the manager of the Unemployment Compensation Department in Bridgeport, Connecticut.

Q Would you please tell us how many people work for you,

[3]

at the Bridgeport Office?

A At present there are 33, plus some that are on loan from the Connecticut State Employment Service.

Q Of these 33 personnel that work in the Bridgeport Unemployment Compensation Office, how many of them are fact-finding examiners?

A To the best of my knowledge I think I have 9 at present. We've had some changes.

Q How many employment security aides do you have in the Bridgeport Office and by that I mean level, one, two and three?

A I don't, I'm not sure of the levels. I believe that there are four.

Q Of those...

A Wait a minute, I'm sorry, I could have brought these figures more accurately with me. We've had some changes that have taken place, that I'm...

Q Would you be able to supply those figures for us?

A I can very easily if you want them and then you will have them accurately.

Q Alright. Of the nine fact-finding examiners, or the nine people that you said conduct fact-finding examinations, are they all entitled-is their job description, fact-finding examiners, or do they have other job titles?

A At present they all are fact-finding examiners.

[47]

Q They're paid under that salary scale?

A Salary scale, yes.

Q Of the other 24 employees that work in the Bridgeport Office do any of them also conduct fact-finding examinations?

A On occasions.

Q Under what circumstances would they be required to do fact-finding examinations?

A If its, if we're under extreme pressure and we have a large number of fact-findings to do there is some selective interviewing that they can do.

Q During the past year were some of these personnel used as fact-finding examiners, over and above the nine that are designated fact-finding examiners?

A Yes

Q How many?

A I can't give you the exact figure, but I could obtain that for you at the office.

Q On a, well, for the purposes of an example. On a busy day, how many people would you switch over to become fact-finding examiners out of the rest of your staff?

A Well anywhere from say 2 to possibly 6 or more. I couldn't tell you that exactly depending on what the circumstances were and where they were needed at the time.

Q O.K. Would you explain for us now, how exactly a fact-finding determination is conducted?

[5]

A Now in what instance are you referring to?

Q Say a man comes in who is, or a woman, who is already been determined eligible and there's a question now as to their eligibility and this is a non-monetary determination. What is the procedure that is normally followed?

A If an issue arises, he is seated, he is asked to be seated for an interview and then he is called, in turn, by a fact-finder for an interview.

Q What would start in motion the determination that there had to be a fact-finding on the person?

A The interviewing that occurred on the claim line, is that what you are referring to?

Q Yes

A Possibly an issue of availability on the claim line may cause this.

Q O.K. Going back one step then. Does normally the question of eligibility arise when the person goes up to get his check?

A. Yes

Q What, does he have to present any form to show that he has complied with the unemployment compensation law?

A He presents an effort form.

Q And what is that form?

A That he has made effort to obtain employment in the

[6]

the past two weeks. These forms are issued to them each week when they file and they take it home with them, complete it at home, and return it with them on their next visit.

Q Is that the form that's known as UC-45?

A Yes.

Q And all claimants have to present their UC-45 form before they can get their checks?

A When they're filing their claim, yes.

Q There is, there. If the line or the number of claimants that day was very great, is the requirement of presenting the UC-45 form ever waived?

A No.

Q It is required in every case before the claim can be filed?

A Yes.

Q Now the person who first examines that UC-45 claim, what is their job title and position?

A It would be either an employment security aide or an employment security interviewer.

Q And if they find some non-compliance or some problem about availability for work, then the person is directed?

A To go to the fact-finding to have a seat.

Q And what occurs during the actual fact-finding procedure?

[7]

A The fact-finder will call them to the desk, review whatever the issue is and discuss the circumstances with them.

Q If the issue involves the failure to make a reasonable effort to find work, how will the fact-finder determine whether there has been compliance or not? What standards, or guidelines does he use?

A Well, each case has to be handled on its own merits. And they have to take into consideration the individual that they are interviewing. It's difficult to establish this without a specific case. Do you want to cite a case for me and perhaps I can--

Q If we could use a hypothetical case, where a man has filled out six places on his UC-45 form and there is some question in the employment security aide's mind whether or not these might have been the same places that he went to the week before, or whether she's seen these on his previous UC-45 forms, what would the fact-finding examiner look for to determine the validity of the search for employment by the claimant?

A Well they take into consideration the man's skills, the type of work he's seeking, his availability, the hours that he's available for work and his, the actual contacts that he's made to get the job. If it's a repeated effort, he would be asked, why. This is not always considered unreasonable. The man may be asked to return to this place at a specific time and

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this is all taken into consideration and it's on this basis that the benefits would be either approved or denied.

Q Would there be any checking by the fact-finding determiner to see if the person did go to where they said?

A There may be, yes. If they stated they filed applications and this occured at an interview and to determine whether or not it's valid, they may contact the employer to find out what actually occurred.

Q Would that be, would that contact occur while the claimant was there, being interviewed?

A Yes, if its possible for the interviewer to contact the employer at that time. Sometimes they can't reach the employer at that specific time or there may be extreme pressure and they can't reach the employer. They haven't the time to contact the employer so it would be delayed.

Q If a question of eligibility still arises and the employer is not able to have been contacted, will the man receive his benefits for that week if there's still a question in the fact-finder's mind?

A Oh, he may or may not depending on what the other circumstances there are involved, in a situation. I couldn't answer that with a direct yes or not. Let me say this, that in many instances, the claimant is given benefit of the doubt. But to say, you know, it's difficult to give you a direct yes or no answer in any of these instances because I don't know the exact circumstances of the case.

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Q If a claimant came in with only three jobs that he had applied at, and a determination was made by the fact-finder that this was not sufficient effort to find work and the claimant said that he had a person who is not with him at the present time, who could verify that he had been to three other places, would the man be entitled to his check in that instance; or would his check be withheld until he produced the other evidence?

A In all probability it may be withheld until he produced the other evidence.

Q Would the man have to wait until the next two-week eligibility?

A Oh no. As soon as he produced the evidence.

Q He could bring, if he got the individual that afternoon or the next day?

A That's right. Now if he knew of the places that he had been and he has spoken to someone at these places, it wouldn't be necessary for him to bring the person, because if they could verify it they would. In some instances it will expedite it faster if they present the person if they can do it.

Q Are some claimants chosen for fact-finding interviews, on a random basis, being taken out of the claim line?

A On what basis do you mean that?

[70]

Q Is there a periodic redetermination by the Unemployment Compensation office of people in the benefit line, the ones that are waiting on line to get their checks?

A You mean do we pick specific ones out to interview at a time?

Q Yes. Are there any standards that are applied. Do you pick out every seventh individual?

A Oh, no.

Q Do you have any guidelines that require you to redetermine certain individual's eligibility?

A Not, oh it's difficult for me. I don't understand what you mean.

Q Would you redetermine, would you seek a redetermination on specific individuals every two months?

A Depending on what the circumstances are and their availability. Well let me cite an example. I may check on a woman's availability for employment, say if she had several children and there's a, and she may have babysitting problems, something to that effect, more often than I would on an individual who is laid-off for lack of work and was seeking continual work and there is definitely no problem on his availability for employment. Is that what you mean?

[11]

Q Yes.

A That's what you're referring to?

Q Yes. But also will there be a closer scrutiny of claims that have continued over a longer period of time?

A There might be, trying to determine as to why this individual is having more difficulty obtaining employment than someone else.

Q Are there any regulations, guidelines or standards that require a periodic redetermination of long-term claimants?

A Nothing definite, No.

Q No regulations that you could say, regulation B?

A There is an old DM memorandum that we had several years ago that we use to refer to, but that more or less is for periodic re-interviews. But that more or less has gone by the board. We use it occasionally as a sort of a general guideline.

Q Therefore, is it your statement that there is not any set standard of redetermination for claimants?

A Well during periods.. Policy will determine more or less how we will interview the claimants. We will receive a policy or an instruction from Hartford as to what we are going to do. It would be Hartford that would determine it to a certain extent.

[/4]

Q Is there any policy in the Bridgeport Office that every tenth or twentieth claimant is eligible for, I mean, is required to be redetermined by the fact-finder?

A Every tenth or twenieth claimant?

Q This would be left up then to the discretion of the Employment Security Aide who reviewed the UC-45 form when the claim was presented?

A Each case is handled individually on its own individual merits.

Q And you testified earlier that all claimants have to have their UC-45 slips checked before they can receive their benefits?

A Yes they all present one when they're filing for benefits.

Q Mrs. Smarz, something I neglected at first. How long have you been the manager of the Bridgeport Office?

A I became manager, December 1, 1971.

Q How long have you worked for the Unemployment Compensation?

A I started in 1945. I worked until June, I believe, of 1946. I was terminated temporarily came back in 1947, went on active duty during the Korean conflict and returned after that and worked for the State ever since.

Q Have you always worked in the Bridgeport office?

A No.

[13]

Q What other offices have you worked?

A Well for a short period, I worked in the Ansonia office. That was for a very short period of time, way back in the 1940's. I managed the Norwalk office from, I believe, August of 1962 until May, I think, or June of 1970. Then I became manager of the Stamford office, then transferred to Bridgeport. I'm not sure of the exact dates but that's about the length of time.

Q So your managerial experience has been both in Bridgeport and in Stamford?

A And in Norwalk.

Q And in Norwalk. Did you hold other positions below that of manager when you worked in the other offices and even in the Bridgeport office?

A Well in the other office for the short stay. Oh, well I was also in New Haven. I was a claim-examiner at that time. I was a super-claims examiner, a fact-finder and a supervisor while in the Bridgeport office.

Q You testified earlier that some times personnel of the department other than fact-finders will be called upon to do fact-finding examinations or determinations when there is a need. Do you ever do fact-finding determinations?

[14]

A At present?

Q Yes.

A Once in a great while.

Q Do you review the fact finding determinations made by your fact-finders?

A My supervisor usually reviews all the cases that go on appeal or any case that one of the fact-finders will request and on occasions I will review also.

Q You said your supervisor. Is there another manager?

A I have an assistant manager in the Bridgeport office who is in charge of the fact-finding.

Q But he is under your authority?

A Yes.

Q So he would be the one. Does he review all fact-finding determinations?

A Not all fact-finding determination, no.

Q Is there any criteria by which a fact-finding determination is review by a supervisor?

A No there isn't. On occasions when a situation will arise where we will do a review of certain instances or certain issues in your fact-finders records. Cases are reviewed to see that they would understand policy. And if there is any questionable case or a case that is going on appeal or dispute, if we have some issue involved, it would be reviewed. If we have any problems that occur in the office we'll forward a report to the

[15]

adjudication unit in Hartford for a decision.

Q Does your fact-finding supervisor ever overturn decisions by the fact-finder?

A Yes

Q Is there any criteria or standard for that?

A Well, I think the main issue would be that there was some misunderstanding on the policy and he felt that the examiner was making the wrong decision.

Q Supposing the converse that there was a claim found, a claimant found eligible. Are there ever times when the claimants, when a fact-finder determination would be overturned by the supervisor, on a finding of eligibility?

A You mean to make him ineligible?

Q Yes

A There may be an instance.

Q But it, it was your testimony previous that it's not normally the procedure to review all fact-finding determinations?

A It's impossible.

Q Do you have any bi-lingual fact-finders in the Bridgeport office?

A No. Do you mean that would speak other than English?

Q Specifically, Spanish-speaking fact-finders?

A I have one young man that's attending school now studying Spanish. I don't know if the others have are able to

[16]

speak other languages besides English and understand it.

Q Is there any provision made that if a fact-finding determination is required in a case for a person who does not speak English, that a translater will be provided by the Department?

A For Spanish-speaking people I have two employment security aides that speak and understand Spanish, and they've been used for translating.

Q However, they do not do the fact-finding themselves?

A They do not do the fact-finding. They come into the back field and they will translate, both to the claimant and to the fact-finder. I have one or two people, I believe, that can speak some Italian. When the issue arises they can help. I myself can speak Ukranian. Well, not that fluently, I take it back. And some Polish, but enough to understand the individual or so that they can bring someone with them on their next visit to help them in interpreting. It has always been my policy, the policy of the Department, to try to assist these people when they come into the office. Unfortunately, we cannot provide enough interpreters for them, but we do try to make arrangements for them if at all possible to bring someone with them. Sometimes there is a claimant that's available and is filing for benefits too. They will assist you. People are very cooperative in that manner, in trying to help one another and we try to help them.

[17]

Q Mrs. Smarz would you please explain what is the practice and procedure followed in employing a pre-termination hearing by the office. What sets it in motion and what exactly is it?

A A predetermination hearing is done in reference to a separation of employment, is that what you're referring to?

Q Yes, excuse me. The redetermination hearing we're talking.. The pre-termination hearing, not re-determination, unless our terms are somewhat different. In a pre-termination hearing, after a person has been found initially eligible, what exactly is the practice or procedure that is followed, and when did this type of hearing start?

A Are you referring now to separation, to refusals of referral by the Employment Service?

Q Yes.

A That type of hearing?

Q Yes, and what other circumstances would necessitate a pre-termination hearing?

A Well there are, if a claimant reports to the office and files a claim and is separated from employment for other than lack of work and it's determined by the reason for separation, that a hearing must be scheduled for the employers involved.

[18]

He is at that time notified and we have what we call a pre-determination hearing form, which is mailed to the employer with a supplementary fact-finding report and a slip is given to the individual, scheduling him for a hearing and a time that he will report and the separation from employment be discussed at that time.

Q Do pre-determination hearings ever occur after a person has been found eligible for benefits and has begun to receive checks?

A If there, now let me see if there is an instance. I'm trying to think. Now if a claimant refuses a referral by the Employment Service, and it is determined that a hearing is necessary, at that time there is a hearing scheduled. A Route Slip is received from the Employment Service, and we send to the individual a hearing notice scheduling a hearing for him to come in and the hearing notice explains what the situation is. That there is a hearing scheduled for him and he reports at that time and we have a hearing regarding the separation or the refusal of referral, I'm sorry.

Q O.K. Dealing with a specific issue of refusal to a certain referral. Until such time as a pre-determination hearing is rendered, is the man or woman still entitled to collect benefits?

[19]

A Yes, I believe so. The, he is receiving his benefits. We are notified by the Employment Service that he has refused a referral and we immediately notify him to report for a hearing by a five-day period.

Q What form does this pre-determination hearing take, is it the same as a fact-finding?

A Yes, it's a fact-finding. It's a fact-finding interview.

Q Is there the necessity to check third-party information, not present when the hearing is going on?

A Well there may be if the individual disputes the fact that he did report on this specific referral. And then if the employer contact is made and it's determined that the individual was there and some error, we were notified that he failed to report, that would be your third party. If he was there and the job wasn't suitable for him then perhaps the claim for benefits are paid. But, that would be your third party. Sometimes there may be a question arising where they have to contact the Employment Service interviewer that made the route slip.

Q If there is a conflict between the statement of the claimant and the statement of the party that the claimant was referred to, how does the person who hears the pre-determination hearing, how do they render a judgment?

[20]

A Only on the facts that they have before them, to determine whether they can approve or deny.

Q But if for example, a man claims that he went to the place, the job that he was referred to, and that they told him that no jobs were available, later on a call comes in from that employment, that possible place of employment, stating that the man was never there. After an initial check, the man claims that he went there but they didn't take his name down and they possibly forgot him. Is there any standard or guideline?

A Yes. Very often an individual, if he has been to this place can describe some conversation or some individual that he saw there and he's given benefit of the doubt on the basis that he was there.

Q How long have these pre-determination hearing been in effect?

A I don't remember exactly when we started using them.

Q Is it, are they fairly recent? Within the last two years?

A For separations, I believe they've been, well since. Do you know, Mr. Wasik? I'm sorry. I have to direct it to him. Was it about June of 1970 that we went in for pre-determination hearings on separations and then at a later date on the refusals of a route slip from the Employment Service? The exact date I can't tell you. I would almost say, I'm trying to think now.

[21]

Q This isn't a long-standing practice that's been in effect for, like ten or fifteen years?

A No, definitely not. No this all stems from Java.

Q Alright. o.k. Thats..

A That's what you want?

Q What employees are eligible to handle pre-determination hearings?

A I don't understand.

Q Are there situations, as with the fact-finding, where the employment security aide would be able to do a pre-determination hearing?

A An employment security aide?

Q Yes.

A There may be an instance where they may do it, but its doubtful.

Q In other words, normally an employment security aide, either of level one or two, would probably not do a pre-determination hearing?

A That's right.

Q Normally then would it be the practice that only an employment security aide number three, one with experience, might be called upon to do a pre-determination hearing?

[22]

A No, its.

Q Is it rather unlikely?

A It's unlikely, unless there is an extreme emergency. But it's unlikely.

Q Is the level of expertise and knowledge required for a pre-determination hearing, higher than for a fact-finding determination?

A Well, they have to be. I would say so.

Q That there is the necessity of a higher expertise for that type of pre-determination hearing?

A Yes.

Q Mrs. Smarz, is the manual that entitled Unemployment Compensation Regulations used by the personnel in your office? I'm referring to that yellow paperback pamphlet that was..

A Yes.

Q That is used. Is that available to all fact-finders and redetermination, people who handle redetermination hearings, pre-determination hearings?

A Under the UC law they are available.

Q Does each fact-finder also have a copy of the Interpretive Digest on court decisions?

A I have a master copy in the office that's accessible to everyone.

Q So there's only one copy in the office?

[23]

A I have one copy.

Q Do you all, does your office also have a copy of the claims policy letters?

A Yes, fact-finders have copies also.

Q The fact-finders each have individual copies?

A Yes, I believe they all have copies. We try to obtain one for everyone.

Q And the two booklets that have both the unemployment compensation laws, and the one, the yellow one, with the regulations are also contained by, are also kept by the fact-finders?

A They should each have one. I would say that.

DIRECT EXAMINATION BY MR. CRANE

Q Mrs. Smarz, you indicated that when you have a heavy backlog of fact-finding decisions to make that you're forced to use persons in the office other fact-finders. Would those be employment security aides, more experienced ones?

A Do you mean employment security aides or do you mean employment security interviewers?

Q Well, what is the distinction?

A An employment security interviewer is the title of. The employment security aides are a group of people that were

[24]

appointed I believe, within the past two or three years and they're CS D 1, 2, and 3. Now employment security interviewers were formally known as claims examiners and their titles were changed to employment security interviewers. Now there were also what we had, intermittent claims examiners which were our part-time people.

Q Alright, well suppose you, I'll just let you answer the question. Which of those persons, from which of those groups, would do, be pressed into fact-finding service if there was a large backlog?

A Employment interviewers, some of the intermittents.

Q Would be intermittens claims?

A Claims interviewers, with experience; good experiences the claims examining and possibly even an employment security aide, if necessary. But I can't recall ever needing to use them, although I have asked them if they were interested, they can do it.

Q When a person who has been initially determined eligible and is receiving benefits goes into the office on a regularly scheduled bi-weekly appointment, when they go, who do they show their UC-45 form to? Is it a claims' interviewer, or an employment security aide?

[25]

A Either one who is operating that particular claim line.

Q So they, their work is interchangable at that point?

A Yes.

Q Is it possible for a person to collect 26 weeks of benefits which is the maximum under law right now. Is it possible for him to receive 26 consecutive weeks without a redetermination being made as to his eligibility, so long as at none of his appointments was any question raised by an employment security aide or the claims interviewer that would require him being referred for a fact-finding?

A Yes.

Q So there's no procedure for periodic redeterminations of individuals who are collecting benefits?

A No.

Q Did every person who applied at the Bridgeport unemployment office during June, July and August of 1972 receive a benefit rights interview?

A No, I couldn't say they did. Not every person, no I wouldn't say that.

Q In fact, wasn't there a memorandum sent to the office managers in October, indicating that, now that the rush was over or the heaviest load of work during the summer, that it was expected that everyone would now receive a benefit rights interview? I'm referring, I can show you the memorandum. It says, "Memorandum To All UC Staff Members And Local Office Managers

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dated October 5, 1972, signed by Mr. Hatcher. Do you recall receiving that memorandum?

A I probably have it in my file.

Q So apparently when there is a heavy influx of new claimants or very large list of continuing claimants, it's not always assured that a person will get what you term the benefit rights interview?

A That's right. It's impossible. We're not staffed sufficiently to be able to handle all of that, to do it all.

Q How many employees approximately did you say, are employed there now?

A I have, I think its 33 or 34, I'm trying to determine because we lost one or two.

Q Do you recall approximately how many employees there were six months ago, and a year ago? Whether there were more or less?

A Oh there were more. And I think we had a staff of anywhere from 40 to 44, intermittents included in that group.

Q Do you have any intermittents examiners now?

A No intermittents working now.

Q They've all been laid-off?

A Yes.

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Q You indicated that either a pre-termination or pre-determination hearing, in any event, a fact-finding hearing is given when there is an issue of a person refusing a referral by the Employment Security Division?

A Yes.

Q Are there any other type of circumstances where this type of hearing would be given before the person's benefits were terminated?

A Well is they are seated for an interview and there is some question that's going to arise we ask them if they want to have the interview then or if they want to, would like to have a hearing scheduled. We give them that option.

Q But if they choose to have a later hearing, they would not get...

A They would schedule another hearing for them.

Q They would not get their benefits in the meantime, I'm sorry, I didn't hear the answer?

A No.

Q When a hearing is given involving a referral or refusal of a referral by the Employment Division, that would involve a question of whether the applicant or the claimant had in fact refused it, whether it had in fact been offered, whether in fact he had a valid reason for refusing it if indeed he did refuse it. Are any

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of these issues ever involved on a, when a fact-finding decision is made that a person had not used reasonable efforts to find work, would any of these factual issues ever be present in that type of cases?

A I don't understand what you mean. Our issue at hand is the fact that he refused a referral.

Q Right. In that case, he is generally given notice and an opportunity to have a hearing and to present evidence if he chooses to before the decision is made?

A Yes.

Q On the reasonable effort fact-finding decisions, those are generally conducted the day that the person comes in to pick up their check. Isn't it true that in some of those cases, there will be factual issues involved, such as whether or not the man had in fact gone to several places that he had listed on the UC-45 form?

A Yes.

Q In those cases you indicated that the fact-finder would try to confirm whether in fact he had gone to the places he listed or stated that he went to, but it wasn't always possible to reach the employer. Isn't that correct?

A Yes.

Q And that the fact-finder would make his decision based on facts that he could confirm on the spot. What I am asking you

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is whether or not you see any significant difference between factual issues that might be involved in the reasonable effort decision, as opposed to factual issues that might be involved in a refusal of referral by the employment service. In other words why are hearings given before the person is terminated on refusal of referral by Employment Service but not on reasonable effort issues?

A I can only say it's been procedure.

Q On the issue of the reasonable effort to obtain work, which Mr. Kelly went into, some of it, when he was questioning you earlier, I'd like to go into that in some more detail. To your knowledge is the statutory requirement of reasonable effort specifically defined in any department written regulation or policy letter?

A No, not. You mean like a number, so many contacts is considered reasonable effort or what have you. No, not to my knowledge. It's,each effort case is handled by its own individual merits.

Q You indicated that,what I'd like to ask you, you talk to your fact-finders, do you not, when you are training them before they begin their duties?

A Yes.

[30]

Q And I assume you would have periodic meetings to go over new regulations or policy letters you might get. You also indicated that occasionally you give, or sometimes you give the benefit of the doubt to the claimant when there is a question of whether he had made reasonable efforts. Is there any single standard that is used by the fact-finding examiners on deciding one way or the other, on whether the person gets their benefits?

A You mean on giving them benefit of the doubt?

Q Are they told that they are to apply a specific standard, such as the person gets benefits if they have a reasonable doubt that the person had not made sufficient efforts? Is there any type of standard, a single, uniform standard that they are asked to apply, when they have a doubt in their mind?

A It all depends on why there is any doubt in their mind as to whether they had made a reasonable effort. No, there's, I'm sorry I don't understand you. If its handled on its own individual merits and there is some doubt as to why, as to whether or not this individual should be paid, then the doubt would either stem from the fact that the individual doesn't understand the circumstances or there is some reason why he hasn't looked for work, which may create an issue of availability. Or there may be an issue that possibly he had a job pending and it didn't materialize for him and if this could be verified, he'd be given benefit of the doubt and paid benefits. It's so general.

(31)

It's difficult because everything is handled on,each case varies.

Q That's true. And isn't it true that, at least in some cases, the identical set of facts presented to the nine different fact-finders who are employed right now, that there might very well, on questionable cases, there might very well be a different decision reached by different fact-finders?

A There might be.

Q Are you familiar, Mrs. Smarz, with a policy letter, which I'll show you in a moment, I believe the date of it is 1956, relating to the statutory requirement of reasonable efforts to obtain work. I'll show it to you and ask you if you are familiar with it?

A I'm familiar with it. Every so often I take them and re-read them and review them.

Q For the record I'm referring to a "Disputed Claims Policy Letter", with the identifying number SRU,A60H directed to all unemployment compensation managers signed by George Walker, Director. The date of the policy letter is October 22, 1956 and the policy letter attempts, does it not, to define what constitutes reasonable effort?

A That's it's not a hard and fast rule, yes.

Q How this policy letter indicates a number of variables or factors that might influence whether or not the person had made reasonable effort and I'd like to go into that a little bit,

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not just what's in the letter but what actually comes up in your office as cases come in. Would one factor that would be taken into account by the fact-finding examiner to determine whether or not reasonable effort had been made, be whether or not the person had a car?

A It might be, yes.

Q Would a person who had a car be expected to go to more places than a person who did not have a car? To conduct a more far-ranging search for work?

A Perhaps a more far-ranging one.

Q Would a person who had access two days a week to the use of a car of a friend or of a relative be held to a higher standard on working than a person who did not have a car at all?

A Well there would probably be other factors that would enter into that also.

Q But that could be one of the factors that would have to be weighed by the fact-finding examiner?

A Maybe. Yes.

Q I'm sorry, are you saying that he should, but might not? Or that maybe he would and maybe he wouldn't?

A That would be one of the factors but then, in addition to that there would be other factors that would determine the decision also.

Q What type of weight?

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A The type of work that the individual does would enter into that.

Q What was the employment situation in Bridgeport during June, July and August of this summer? Would you describe it as, many jobs available, or fewer than usual, or a very tight labor market with few jobs available?

A There were some jobs that were available.

Q But would you describe it as a fairly, as a tight labor market? Do you know what the unemployment rate was in Bridgeport during June, July and August?

A I would say that, oh, I'd have to check the statistical figures.

Q But did you, was that information passed on to the fact-finding examiners during each month? Are they informed of what the unemployment rate is?

A No.

Q They're not?

A Not the percentage figure, no.

Q In the policy claims letter referred to earlier dated October 22, 1956, it states that it is not intended to require claimants to make futile trips to employers' hiring halls just for the sake of building up a record of job seeking when there are not many jobs available. Do your fact-finders take into account the job market when they're making a determination as to reasonable effort?

[34]

A To a certain extent.

Q But they are not given the information on a regular basis of what the economic indicators show for availability of jobs?

A Well they may have a general idea, in discussion, but I don't actually give them the information on a percentage basis, the actual statistics.

Q So that you're not sure to what extent they take that into account on their fact-finding decisions?

A (unintelligible)

Q Have you ever seen it described as one of the factors that influenced the decision of a fact-finder when he writes his fact-finding report, as being the basis for his decision, or one of the factors?

A Not that I remember.

Q Mr. Blair is employed in your office, is he not?

A Yes.

Q What is his..

A Fact-finder.

Q He described the fact-finding function on reasonable effort to obtain work, in a hearing which is an exhibit in this case, as being basically a matter of judgment on the part of the fact-finding examiner when he's making decisions on reasonable efforts. Would you concur with that description?

[35]

A What was his description?

Q That in the end it comes down to good judgment, on whether they employ good judgment or not, on making a determination as to whether the person has used reasonable effort.

A Well the whole intent of reasonable effort is that the individual is making efforts to obtain, making efforts, so that he may obtain employment from these efforts in the future. And this is all taken into consideration. Now it would be on the judgment of the interviewer as to whether or not this is actual reasonable effort.

Q From your experience what would you say would be the average, if there is an average length of time for a fact-finding interview on the issue of reasonable effort to obtain, to work? Would it be 5 minutes, 10 minutes, 15 minutes?

A Well they vary. 15 minutes to a half-hour, sometimes 10 minutes.

Q Do you keep figures on the number of fact-finding interviews that are conducted in your office on a daily, weekly, or monthly basis?

A Yes.

Q Do you know how many were conducted during the peak period of claims during this summer? For example, do you know approximately how many were conducted during June, July or August?

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A No. I could get those figures.

Q Would you make a note?

A You want them?

Q Yes. You keep them on monthly basis?

A Yes, Hartford. Statistics would have that in Hartford.

MR. WASIK: You're talking about the interviews?

THE DEPONENT: Yes, they want the number of interviews, the fact-finding interviews held during June, July and August, of 1972.

MR. CREANE: Not all of them, really. We're interested in the one that involves fact-finding interviews other than initial eligibility. We don't want the fact-finding interviews or predetermination hearing on separation issues.

THE DEPONENT: I think they have a breakdown on that. I would have to check that.

BY MR. CREANE:

Q. Do you know how many claims, initial and continuing claims, were filed in your office last week or the week before that, just approximately?

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A Between 5,000 to 7,000.

Q That would be both new claims and continued?

A And continued. The figures varies, that's why I can't give you a definite figure. Those are all obtainable.

Q There's a definition by the Department of reasonable effort to obtain work, a statutory requirement for eligibility, contained in this 1956 Policy Letter. I'll read it to you and ask you if that is generally the standard that you try to apply and to have your fact-finding examiners apply. In paragraph two it states, "reasonable efforts to obtain work are such effort as we would ordinarily expect anyone to make who is honestly looking for work".

A Yes.

Q That is a very difficult standard to apply, isn't it Mrs. Smarz, in all honesty?

A Is it difficult?

Q Yes.

A Yes, it is difficult. That's why I try to say that it has to be handled on each individual case.

Q In order to handle it on an individual case, to make a fair determination on an individual case, the fact-finding examiner would have to know quite a bit about the claimant, would

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he not. He'd have to know the man's background, the size of his family, his past work record, how badly he needs employment, what type of man he is, his physchological makeup, he would have to know quite a bit, wouldn't he, to make an individual determination? What is reasonable for that man might not be reasonable for another man, isn't that right?

A Well it's impossible to know all that about an individual as far as that's concerned, but the type of work that he's seeking and something about his background in that particular work and where it's available and what efforts he has made to get that type of work would be my main concern.

Q There is in fact, no written list of all of the factors which might influence a decision on whether a reasonable effort to find work has been made, isn't that correct?

A Not to my knowledge.

Q And in fact, such an exhaustive list would probably not be possible, would it, since there are so many factors which might influence a particular determination by a fact-finding examiner?

A That's true.

Q To your knowledge, what written standards, relating to reasonable efforts to obtain work, what written standards or policy letters are available to the fact-finding examiners in your office other than this policy letter dated 1956?

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To give them guidance in making their decisions?

A Why I'd have to check all my Policy Letters to determine it, because I have a breakout on it. There's a recent memorandum that came out over the signature of Carl Eiseman.

Q I can show you some recent Policy Letters and you can tell me if there are any others, to your knowledge. I'll give you a moment to look them over. Is there a requirement, written or unwritten at the Bridgeport unemployment office that persons, when they fill out their UC-45 form, if they list all of the places that they visited all in one day for that two week period, that that would not be reasonable effort? In other words a person went to all in one day, the six places or seven places?

A What I would be concerned about in that instance, and what we would question, is what about the other nine working days in the week, in the two-week period, and why didn't they make efforts during that period, because it might create an issue of availability.

Q Were claimants told that they had to have at least six employers sign the card in order to be eligible?

A The employer isn't required to sign the card.

Q To list six places of employment that they've visited, were they told that they had to?

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A It was not an official notification that they were to tell these people, if that is what happened. But this is, there's no official number or anything in reference to this.

Q Suppose a person, person A, went to six places and listed them on his UC-45 form and made no other efforts to obtain work; person B went to 5 places, or four places, but also made other efforts, they looked in the newspaper, they called friends, they made a number of other efforts to obtain work. How would a fact-finder arrive at a decision as to whether either or both of those were eligible for benefits?

A We would just arrive at the reasonableness of the situation in both cases.

Q The reasonableness being what the fact-finder feels is reasonable?

A That's right. In the particular instance. You're talking about a man that lists four places and then he ask friends. Say that this man is..

Q And he reads the newspaper everyday.

A And he reads the newspaper everyday and he has certain qualifying skills and he knows that there may be a job open in a plant and perhaps with asking friends he may get this position. That's reasonable. Isn't that what you or I would do to obtain a position.

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Q But isn't it also quite likely that the person who had listed six places on their UC-45 form would have gotten his check with no problem at all, as long as it was filled in properly. The employment security aide or the claims interviewer in all likelihood would have, if the form was filled out properly have given him his check if no other question arose?

A It's possible.

Q Whereas the person who had perhaps only filled in four places might very well have been referred for a fact-finding interview since he had not filled out the forms completely?

A It's possible. But on the basis after being interviewed he was not denied benefits.

Q Well, it is a hypothetical that I'm giving you.

A You know this could happen. Well yes, I know, I understand that, but this does happen.

Q Is it possible that, of your nine fact-finding examiners, we'll say, seven would feel that the effort was reasonable, looking, reading the newspaper, and asking friends and that one or two of the examiners might say, "Well, how do I know that he really did that? He didn't fill out the form and I find that he did not use reasonable effort". Isn't that possible?

A It's possible, but I sure would question it.

Q But in all likelihood?

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MR. TAMIS: John, can I ask a question?

MR. CREANE: O.K.

MR. TAMIS: Just a quick question.

DIRECT EXAMINATION BY MR. TAMIS:

Q Is it the understanding of claimants in order to collect checks on a bi-weekly visit that they have to present the UC-45 form with at least six employers on it?

MR. WASIK: She can't testify what the understanding of a particular claimant is.

MR. TAMIS: Well that's a good point. I'll rephrase the question.

BY MR. TAMIS:

Q Is it the policy of the claims examiners on the benefit line to give checks when the UC-45 form has six employers listed on it spread across the ten working days that are in issue?

A Yes, they probably will.

Q Alright, so we're starting from that supposition.

BY MR. CREANE:

Q On the other hand, it's not automatic proof that you've satisfied the reasonable effort simply because it's filled out. It does not automatically mean that you have to get your checks, does it? You indicated that there's no written policy on

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the number of employers that would be, that could be required that the person visit in order to get their checks?

A No, there's no written policy on the number of employers.

Q So in fact one claims examiner, I mean fact-finding examiner, might feel that six places, spread evenly over two-week is a reasonable effort. Another fact-finding examiner might feel that eight is a reasonable effort, or ten is a reasonable effort, isn't that correct?

A Well I can't tell you what the fact-finding, how the fact-finding examiner feels because I don't know all the circumstances for this specific case that you're referring to. There's more involved in these situations other than just the fact that this man went out to look for a job. Or that he had listed six or ten or twelve places to seek employment because there's many other factors that are taken into consideration also.

Q And the list of other factors that can be taken into consideration is listed nowhere in writing, isn't it correct?

A No I wouldn't say that. You have it in some of your letters right there.

Q That indicates that at most, three factors will be taken into account: the age of the person who is called the claimant; the type of work that he had done previously, relating

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to the wages of the jobs that are available; and I believe, a third factor discussed in many of the memorandums that I've seen from the department are that senior citizens will be given special consideration, persons over 66 will not be required to make a strenuous a work search because many places simply don't hire anyone over 66 and they're not required to, isn't that correct?

A Just as the memorandum reads.

Q Yes, and would you indicate the other two factors which are discussed in the memorandum?

A What are you referring to? Efforts to get employment?

Q Yes, well you indicated in response to an earlier question which was that there was an inexhaustable list of factors which could influence the fact-finding examiner when he made a determination as to whether a reasonable effort has been made. You seem to contradict an earlier statement when you indicated that, in fact, the factors were spelled out in the memorandums and my point is that there are only three factors discussed in the memorandum that you referred to.

A Alright, you have your age. You have your skills, the type of work. You have your memorandum on effort here in your reasonableness. That's what I was referring to.

[45]

Q Well the reasonableness definition, wouldn't you agree simply is: reasonable is what the fact-finding examiner determines to be reasonable under the circumstances?

A Under the circumstances.

Q So that there are many other factors which can influence whether or not the effort is found to be reasonable?

A Yes.

Q For example, you indicated that a person who went back to a place that they had applied to at an earlier point, it might or might not be unreasonable for them to do that, to re-apply at factories that they had been to at an earlier date?

A If an employer indicated that there may be employment if he returned there again in two weeks, that he may have a job for him, it would be reasonable for him to return there.

Q Would the size of the factory that the person went back to be a factor? In other words, if a person went back periodically to a very large factory which was known to hire periodically, that might be treated differently by the fact-finding examiner than revisiting a very small factory with a very low turnover of employees?

A It might be.

Q And that there are no, that you really rely on the good judgment and good sense of your fact-finding examiners to

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treat people fairly who come into the office and to make fair decisions on fact-finding decisions?

A Yes.

MR. CREANE: Don, I have no further questions at this time. Do you have any questions?

MR. WASIK: Just a couple, maybe.

CROSS-EXAMINATION BY MR. WASIK:

Q During normal times, if there is such an animal, Mrs. Smarz, is it a policy of the department to have periodic interviews when people come in on interviews?

A Yes, in normal times.

Q Yes, alright. So that, is it correct to say that during the past year at least, with the unemployment situation the way it's been, that these periodic interviews have not been held, but that the interviews are only held when the interviewer on the line feels that there is an issue as to a person's eligibility?

A That's right.

Q As to the question of benefit rights interviews, will a Spanish-speaking person or anyone who has difficulty with the English language files a claim, is there any special effort or policy in regard to giving these people benefit rights interviews?

A As I spoke of the two young ladies that I have that speak Spanish in the office and if there is an issue arises where

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its definite that the individual does not understand what is trying to be explained to him, we do ask the interpreter to come and speak for them. As far as another individual is concerned, or other languages if it's at all possible and there's someone available that can help them, a claimant perhaps, we would use that individual or we would ask them to bring someone to help them.

Q But is it, is the person who acts as an interpreter whether its a department employee or a friend brought by the claimant, is it, are the rights explained to the individual?

A If we're giving a benefit rights interview, yes. It would be explained to the interpreter to explain it to the individual.

Q But is it a policy to give such a benefit rights interview to such a person having difficult understanding the English language?

A We try to give it to everyone we interview. Is that what you mean?

Q Yes. I understood your earlier testimony that there was, at least some period when not everyone received a benefit rights interview?

A During the crush period. They asked during June, July, wasn't that your question. At the time, did everyone get a benefit right interview? They couldn't.

[45]

Q How about the people who had difficulty with the English language. Were they given a benefit rights interview?

A And there was a question of eligibility or availability, we tried to give them to them, yes.

Q In other words, if a person came in with a UC-45 properly filled out, even though that person might not fully understand English, if there was no question in the interviewer's mind, that person would be paid?

A Right.

Q Even though that person might not have been given a full benefit rights interview?

A That's right.

Q But if an issue of eligibility arose would that person be given such an interview?

A We would try to explain the eligibility requirements to them, yes.

Q Now I thought I understood you to say that when a person is given an option of having a hearing that day or come back a week later, that if he decided to come back at a later time, that he would not be given his check, at that time. Is that correct?

A I'm trying to think. They are to be paid their benefits at that time. We have very few of these instances, that's

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why it makes it so difficult. They usually will have the hearing while they're there. If someone has created the problem in the past of not having the hearing or is collecting or is electing to have the hearing at a future date, then we pay them their benefits. Then they have the hearing later.

Q So they are paid?

A I know what you're talking about. You're referring to the question that arose there. They would be paid their checks. I have so few of them that actually occur.

MR. CREANE: I think we might have, there might be a misunderstanding here. I just want to make sure that we're talking about the same situation. When you talked about a person being paid, pending a hearing, you're talking about a refusal of a referral, that type of an issue, are you not? A refusal of the job offered by the Employment Service?

THE DEPONENT: Yes. They would be paid their benefits, right. And then if an issue occured where we are going to deny the benefits when it would have be, constitute an overpayment. You follow? Do you understand what I mean?

MR. CREANE: Do you mind if I ask questions to try to clarify? (Directed to Mr. Wasik).

[50]

BY MR. CREAME:

Q A person comes in and is referred to a fact-finding examiner because of a question of lack of reasonable effort, do your fact-finding examiners, is there a written policy, do they always tell the claimant, "you can have your hearing in a week or how ever long it will take you to get your witnesses together and you'll get your checks today, anyway, until you get the hearing?" You're not saying that those checks will be paid that day, are you that a person can choose to have the hearing a week or two weeks later?

A Well he can't choose to have it a week or two weeks later, because the hearing would be scheduled five days hence or what have you. I mean as far as that's concerned we would schedule a hearing for him.

Q Or even one day hence. Are you saying that the person will get their two checks for the period?

A If they, let me put it this way. If it's a question that I want to go home this afternoon and I can bring this information back to you, we'd let him go home and bring the information back or he's coming back the next day, we would bring it back, he would bring it back the next day. So you would hold payments for that period of time until he brought back the information. Now you have an issue of a hearing that's being scheduled and I think that's what your referring to.

Q A predetermination hearing or pre-termination hearing?

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A Well sometimes an individual will sit down and they're advised that if they want you can interview them now on the issue or you can interview them at a later time. If he wants a hearing, if he wants a scheduled hearing, as a rule, they will have it then. If an issue arises where they want to have it five days hence, you would pay them and schedule them for a hearing. If an issue comes up where they are going to be denied benefits on the period, it would be an overpayment. Now the, this, how can I say. This rarely happens.

Q Which rarely happens?

A To have a hearing scheduled once they, you know, decide that they, once they are seated and they are being interviewed. But if it does happen we schedule a hearing for them.

Q Under what circumstances would the Department be authorized to pay those checks when there is a question of their actual entitlement to those benefits? When would the person get the checks and get their hearing later on? This is an important question.

A They want payment.

Q What?

A If he wants his payment of benefits.

Q In other words, if a person comes in on reasonable effort to obtain work and he has no signature or two signatures listed on the card, he has an option of getting his checks that

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day and getting a hearing later on? That those checks will be paid even though the--

A I can't remember an incident occurring on effort, let me put it to you that way. But if it would occur according to procedure, he would be paid and then he would be interviewed and if an overpayment would be set-up, if he would be determined that he was ineligible for benefits.

Q Is that written policy? Can you refer me to any specific policy that would authorize the Department to do that?

A I don't know. I can't. Is there one on that, Mr. Wasik?

MR. WASIK: There might have been, well, I don't want to testify.

MR. CREANE: Well perhaps we can list that as another--

THE DEPONENT: I'm trying to think of where that--

MR. WASIK: That's my understanding of what the policy is supposed to be.

BY MR. CREANE:

Q Let me put it this way. To your knowledge, during the past year, has any person who has been referred to a fact-

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finding examiner on the issue of reasonable effort to obtain work, received his checks that afternoon and had a hearing scheduled at a later date to determine whether he was actually entitled to those checks?

A I honestly can't remember.

Q You can't remember an instance?

A I can remember an instance on reasonable effort, in all honesty.

Q Do your fact-finding examiners inform persons of their right to postpone the hearing and that they will get their checks in the meantime until the issue is settled?

A They do inform them. I can't say that they always have on every case. I wouldn't say that.

Q Do you have any explanation as to why apparently so few or maybe no claimants choose to receive their checks that afternoon if they can have the hearing at a later date, if in fact your fact-finding examiners are informing them of that choice?

A No, I can't think of any.

Q So in virtually all, perhaps all, instances of reasonable efforts issues that go before fact-finding examiners, the hearing is held that day and a decision is made that day on eligibility or non-eligibility?

[54]

A Yes. Just about all instances, yes.

MR. CREANE: I want to ask Mr. Wasik, if after checking with your clients in the department, you can find any written regulations which authorizes payment to claimants, that entitles them to postpone the fact-finding hearing and to receive their benefits, I would like to see a copy of that.

MR. WASIK: You don't have it in the letters that we've given you already?

MR. CREANE: No. I'm sorry, Don, I interrupted you. Do you want to finish your questions.

BY MR. WASIK:

Q Is it a clear statement that in reasonable effort cases as opposed to refusal of a job referral, that there seldom are factual issues that have to be resolved with the help of a third person?

MR. CREANE: I would object to the form of that question. I think to ask her to define seldom is too vague a word.

BY MR. WASIK:

Q The usual, what's the usual case? Is there a factual issue in the usual reasonable effort case?

[55]

A Where a third person might be involved? You mean when we would contact an employer to verify that a claimant was there?

Q Something like that.

A There are instances where we do it, yes.

Q But is it a general rule, or not the general rule?

A How can I answer that? It depends on the individual.

Q Based on your experience?

A Based on experience, yes. And it would be on the individual case. If there is some doubt in an examiner's mind to resolve an issue they may use that to verify it.

Q I'm just wondering though, do you know how often this might happen. If this is the usual case or that the usual cases are that there is no question?

A The usual case.

MR. CREANE: I have an objection to this one. I think she indicated that she couldn't really answer that question. That she really couldn't give a fair answer to it.

REDIRECT BY MR. CREANE:

Q On, the question of translaters in your office, for particularly Spanish-speaking claimants, whose responsibility is

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this to provide an interpreter? Is it the claimant's responsibility or the Department's responsibility?

A That's hard to say. I've never really thought of it that way. If we can assist the individual in any way, we would do it. If the claimant can bring someone with him, we just ask them to bring him. I've never considered it being anyone's responsibility other than an attempt to resolve the issue. We try to help them in any way we can but, I've never even, I've never thought of that. If its possible and we can resolve, we can present them with someone to assist them we try to resolve the issue. If we have someone that can do the interpreting in the office, or assist it and he's in the processing of the claim, we do it. If we can't do it we put the burden of responsibility on the individual to present someone who can interpret for him. Very often the examiner on the line, if he sees that there is a language barrier, will ask them to bring someone in to the office.

Q What you're saying I believe, correct me if I'm wrong, is that the Department will be as helpful as its resources will permit, but that ultimately its the claimant's responsibility to have someone there present, so that he will understand what is being said to him and so that he can present his facts to the Department?

A If we can help them we can. If we can't, we ask him to bring someone, yes.

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Q And that if you can't help him and he doesn't bring anyone, in your opinion, it's his responsibility and you've done all you can?

A What else can we do?

Q Well if you ask my opinion you could have sufficient Spanish-speaking personnel so that the Spanish-speaking claimants have the same access to the government services.

A I don't have a problem with Spanish-speaking personnel as far as that's concerned because as I said I have two young ladies that do speak fluent Spanish and they're very good in that respect. We do have say, some Greek people that will come in or Portugese and there just isn't any one that can speak the language. You will get different dialects that are difficult to understand and it's almost impossible to provide you with an interpreter for all of these.

Q Do you have any idea of the approximately the percentage of your claimants that are Spanish-speaking?

A No I don't.

Q You couldn't hazard a rough guess?

A No.

Q The two Spanish-speaking employees that you have, I

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assume are occasionally allowed to go to lunch or they're sick occasionally are they not? There isn't always someone there on duty all times is there.

A No.

Q I have no further questions. Do you Mr. Kelly?

REDIRECT EXAMINATION BY MR. KELLY:

Q I just wanted to ask, you mentioned that you had some employees who were working while they were going to school. Are the two Spanish-speaking employees full-time employees, or are they working only on a part-time basis?

A Full-time basis.

Q Full-time employees. How long have they been with the Bridgeport office.

A They started I think in December of 1971 and January of 1972, I think both of them came in.

Q Prior to that time were there any Spanish-speaking employees in the Bridgeport office?

A I became manager in December of 1971, so I can't.

Q Did you work in that office before?

A Years ago.

Q O.K. But in that period, say from December of 1971, back five years ago, you have no knowledge of what the employment situation was?

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A No I haven't. It wouldn't be, it was very vague. I wouldn't know of the staffing pattern.

Q What is the employment, what is their job title, these two Spanish-speaking employees?

A Employment security aides.

Q Level?

A Yes, I think they're two.

Q Two. Both of them are level two?

A I think so.

Q And that they wouldn't be involved in fact-finding determinations?

A No.

Q I have no further questions.

BY MR. CREANE:

Q Just one final question. The fact-finding examiners when they're hired, what type of training or experience are they given before they begin their actual duties?

A Well, it varies. There is a certain amount of training that I, as a manager, would give them.

Q Would you describe that?

A They have the policy letters that I give them to read and review. We have, they're acquainted with the Interpretive Digest, the laws, the fact-finding forms. Brief basic

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outlines as to what they would need to compile into a report. Discussions on the various types of fact-findings that may arise. They're told about the inserts, I acquire some books for them on interviewing. They start with some of the simpler cases, sort of an on the job training. Their cases are reviewed by the supervisor and go through a six-month probationary period and any unusual cases that arise are discussed. They're always free to ask any questions that may arise, to check anything that we have available in the office. If anything unusual comes up, it's referred to the adjudication unit in Hartford.

Q Of the nine fact-finding examiners that are presently working there, how many have come to work in your office during the past year? How many of them were working there a year ago?

A I think all but one. They weren't all working in the capacity of fact-finders. They were promoted. One came from another office up state. She was promoted and given the appointment in the Bridgeport office. The other..

Q So, how many were working as fact-finders a year ago? If you don't know, don't answer.

A I'd say four or five.

Q Out of a total of how many fact-finders a year ago?

A Actual fact-finders, were two. There was another title for a group that were brought in and they were brought in to train for fact-finding. I can't think of the title off-hand.

[61]

MR. KELLY: Excuse me, were they called the intermittent claims examiner?

THE DEPONENT: Oh, no. I'll get that name for you if you'd like because I know that they had a different title for that. But then they were appointed, they took the exam and were appointed as fact-finders. They worked in the capacity of fact-finders.

BY MR. CREANE:

Q You indicated in response to a question from Mr. Wasik that in normal times, whatever they might be, that it is the practice to give periodic redeterminations?

A Periodic interviews, yes.

Q And what is the, how does that work?

A Well, initially--

Q By the way, are we in normal times now at the Bridgeport office? Are periodic redeterminations given on regularly scheduled basis?

A Not quite. The claimant is given a benefit rights interview and all the eligibility requirements are explained to them. Then they file their first compensable claim.

Q And when the workload is not?

A When the workload is normal, we are operating normally, their eligibility requirements are all explained and during

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the course of this interview any questions that may arise with them are discussed. All the, and the examiner will determine at that time the type of work the individual is looking for, the amount, the age of the individual, the marital status of woman, man and whether or not there may be any factors that would involve his availability for employment. And then they're coded for periodic re-interviews.

Q How does that work, the periodic re-interviews?

A Well, say for a woman that has children and she's seeking work. She was laid off, or she quit her job because she has a problem, a babysitting problem, what have you. She quit her job, she's now available for work and she's looking for work. She meets the eligibility requirement at this time and we would probably re-code her for an interview every fourth week.

Q So that the re-coding for a periodic reinterview--

A She would be re-coded.

Q Would be if there was some special circumstances?

A Special circumstances that may be involved.

Q But it doesn't mean that everyone would be coded for a periodic interview?

A Every fourth week, no. And then an older person who is available for work and making efforts to get work, seeking work we may code him or her every six or eight weeks depending on what the circumstances are.

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Q That answers my question.

A It would be set in that manner.

MR. CREANE: Don, do you have any further questions.

MR. WASIK: No.

MR. CREANE: Thank you very much Mrs. Smarz.

THE DEPONENT: Now you mentioned something, let me clarify a point. You mentioned something about the hearings and there was something that I wanted to clarify with you. As I explained that when an individual is seated for a hearing, now, and this is one point that I try to stress with my people that they can have the hearing now or the hearing, is they can have it scheduled for them and if it is rescheduled they are paid their benefits. You asked me why I thought there were so few of those re-scheduled hearings. Wasn't that one question that you asked?

MR. CREANE: Well, in fact, so few that you could not recall a single instance where on the issue of reasonable effort.

THE DEPONENT: For reasonable effort it has arisen.

[64]

MR. CREANE: Yes.

THE DEPONENT: I can't really recall it. We give them a brief explanation that they have the right to have a hearing now or the hearing later and they choose now, so we just proceed with it.

MR. CREANE: Do you know if your fact-finding examiners always tell the person that they can get their checks now if they choose to have their hearing later?

THE DEPONENT: No, I can't honestly say that they would probably say that. And this is one thing I wanted to clarify with you. But if an issue does arise, and the individual does say that, does request to have a hearing scheduled, he is paid and that's the procedure that follows. If it's determined at the hearing that he is ineligible for benefits an overpayment would be set up.

MR. CREANE: But, that is, ordinarily, the claimant would be told you can have the hearing now or you can have it later?

THE DEPONENT: Then they elect.

MR. CREANE: O.K. Thank you very much.

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STATE OF CONNECTICUT)
) ss. March 20, 1973 Bridgeport
COUNTY OF FAIRFIELD)

I, Margarita Torres, an employee of Bridgeport Legal Services, Inc., do hereby certify that the deposition of MRS. ELEANOR H. SMARZ was taken under oath before me pursuant to Rules 30 (a) and (b) (4) of the Federal Rules of Civil Procedure, at 412 East Main Street, Bridgeport, Connecticut on Thursday, February 8, 1973 at 1:45 p.m.

I further certify that the witness was sworn by Attorney Ira Horowitz to tell the truth, was examined by counsel and her testimony was recorded on tape and was subsequently transcribed by me as herebefore appears.

Dated At Bridgeport, Connecticut, this 20th day of March, 1973.

Margarita S. Torres

Margarita S. Torres

[44]

STATE OF CONNECTICUT
LABOR DEPARTMENT
Employment Security Division
Pl. Ex. 14 Unemployment Compensation Department

92 Farmington Avenue
Hartford 15, Conn.

SSD BULLETIN NO. 15
December 8, 1955

TO: ALL U. C. MANAGERS AND FACT FINDING EXAMINERS IN LOCAL OFFICES

1. Due to the snowstorm and resulting prospects of dangerous driving conditions, the conference of fact finding examiners and claims supervisors which was held in Central Office on Friday, December 2, 1955, on the subject of writing non-monetary determinations was ended sooner than had been planned. Because of the premature closing of the conference, the subject matter intended to be covered was not presented in its entirety. At the time the meeting was called to a halt, the general subject of "clarity" of non-monetary determinations had been fully presented and discussed and we were mid-way through the general subject of "completeness." With reference to this subject we had pointed out that "completeness" of a non-monetary determination requires the presence of four elements: (1) statement of the law which is determinative of the issue; (2) statement of the facts on which the decision is based; (3) statement of the reasoning used in arriving at the conclusion; and (4) the conclusion. When the conference was ended we had discussed in detail the elements of the law and the facts; the elements of the reasoning and conclusion were left to be discussed.

2. We had considered our proposed presentation and discussion of the element of "reasoning" as the most important part of the entire subject of writing non-monetary determinations and were disappointed that the opportunity for this presentation and discussion was lost by the early adjournment of the meeting. It was intended to put particular stress and emphasis on the "reasoning" part of non-monetary determinations because of the fact that we have not heretofore included this element in our written determinations. In the past, a non-monetary determination has been considered adequate if it contained a statement of the pertinent law, the facts on which the decision was based, and the conclusion. Our written determinations will henceforth contain an additional element - a statement of the reasoning used in arriving at the conclusion.

3. The material which we had intended to present by way of coverage of the elements of the reasoning and conclusion in a non-monetary determination appears in full detail in pages 10, 11, and 12 of the "Manual on Writing Non-Monetary Determinations," copies of which were distributed at the conclusion of the meeting. Fact finding examiners are urged to study and digest the contents of pages 10, 11, and 12 of the Manual which pertain to these elements. It is suggested that fact finding examiners make a study of the sample determinations appearing on pages 13, 14 15, and 16 of the Manual, with a view toward observing the application of the "reasoning" element in a non-monetary determination.

4. Effective December 19, 1955, all non-monetary determinations in cases of availability, leaving work, discharges, and refusal of referral to or offer of work will contain, in addition to the customary facts and conclusion, the reasoning used in arriving at the conclusion. Inserts 1 and 2 in the current list of authorized decision---inserts will no longer be used, since, in decisions on refusals of referral to or offer of work, the determination must henceforth contain a statement of the "reasoning" as indicated above. Similarly, the use of insert 9 (Lack of Effort) in the list of authorized inserts, is to be discontinued. With respect to the required determination in this type of case, attention is directed to the sample determination appearing under (5) on page 7 of the Manual.

Morris E. Tonken
Special Review Unit

Approved:

George J. Welker
Director

STATE OF CONNECTICUT
LABOR DEPARTMENT
Employment Security Division
Pl. Ex. 15 Unemployment Compensation Department

92 Farmington Avenue
Hartford 15, Conn.

February 27, 1956

TO: ALL U.C. MANAGERS AND FACT FINDING EXAMINERS IN LOCAL OFFICES

During the past several weeks we have made a careful and detailed study of cases in which the local office decision was reversed by an unemployment commissioner. Of the various different issues which were found to have been included in these cases, the issue of leaving work was perhaps more prominent with respect to the questions raised by the reversals in connection with the manner in which the cases were originally handled by the local office. In the leaving work category of cases there seems to be the greatest variance between the local office examiner's finding of facts and the unemployment commissioner's finding of facts. Cases have been repeatedly observed in which the reason for the quit as found by the commissioner was completely different from the reason for the quit as found by the fact finding examiner. It is frequently found that the fact finding report indicates, in the claimant's version, more than one reason for the quit, in which case the examiner has based his decision on his application of one of these reasons; whereas the commissioner has found that the motivating reason for the quit was not that chosen by the local office examiner, but was rather one of the other reasons which had been mentioned to the fact finding examiner by the claimant in the course of the interview and which had been referred to in the fact finding report. For example, the fact finding report indicates that the claimant had quit his job because his employer had refused his request for expense money to defray the costs of commuting a considerable distance to and from work - the report mentions, more or less in passing, that daily driving of this considerable distance, has been aggravating his sacroiliac condition - the commissioner finds that the aggravation of claimant's sacroiliac condition motivated the quit, rather than the employer's refusal to pay expense money.

The situation presented by the above type of case as well as other similar cases which have been observed in our survey raises a definite possibility that the leaving work cases involve an area in which our fact finding examiners must be particularly astute and direct special attention in their fact finding interviews to uncover and determine the specific and actual reason for the claimant's quit. Where the claimant assigns more than one reason for his quit, it is incumbent on the examiner to determine whether any one reason of those expressed was the specific reason which impelled the quit. Where there is an inference or an implication that claimant quit his job for a reason in addition to that specifically expressed by the claimant, the reason so raised by inference or implication should not be ignored by the examiner; in such case, the examiner should determine, after careful questioning, whether that reason was

February 27, 1956

or was not the motivating cause of the quit. In other situations, where the reason for the quit as expressed by the claimant is obscure, ambiguous, or of doubtful authenticity in the light of the particular circumstances of the case, it is incumbent on the examiner to continue and pursue a line of questioning designed to discover the real and actual reason for the quit.

Fact finding examiners are urged to direct particular attention to fact finding interviews in "leaving work" cases in the light of the above comments.

(s) George J. Walker
Director

Pl. Ex. 16

STATE OF CONNECTICUT

LABOR DEPARTMENT — EMPLOYMENT SECURITY DIVISION
92 FARMINGTON AVENUE · HARTFORD 15, CONNECTICUT

UNEMPLOYMENT COMPENSATION DEPARTMENT

October 22, 1956

Disputed Claims Policy Letter, SRU, A60B

TO: ALL U. C. MANAGERS

SUBJECT: Statutory Requirement of "Reasonable Efforts to Obtain Work"

1. Statutory Provision

One of the conditions of eligibility for benefits prescribed by our Unemployment Compensation Law is that the claimant "has been and is making reasonable efforts to obtain work." (Section 7507 (2)).

2. What constitutes "Reasonable Efforts?"

"Reasonable efforts to obtain work" are such efforts as we would ordinarily expect anyone to make who is honestly looking for work. Just how much effort is required to satisfy this condition cannot be set down under any hard and fast rule. Aside from the efforts which we require elderly persons to make, as discussed below, the extent to which a claimant is required to make such efforts in order to characterize them as "reasonable" efforts within the meaning of the law depends upon several varying factors - labor market conditions prevailing at the particular time, claimant's physical condition, the length of claimant's unemployment, the extent to which the claimant's union serves as an exclusive hiring agent, etc. For example, where, in a given area, there are numerous potential sources of employment which may provide opportunities for such work as the claimant desires, a reasonable effort to find work on his part will require more numerous and frequent employer contacts. If, however, there is very little hiring taking place because of depressed economic activity and the Employment Service has most of the existing jobs listed in its files, then a less complete round of visits to possible employers is indicated. Similarly, where, by virtue of union regulations, a claimant's sole source of employment is his union agent, constant contact with the union agent would constitute a reasonable effort to obtain work. It is not intended to require claimants to make futile trips to employers' hiring offices just for the sake of building up a record of job seeking. Similarly, where the claimant is afflicted with a physical disability which is not so serious as to negative his eligibility for benefits but is of such nature as to restrict his physical mobility, a less concerted program of employer contacts by such claimant is indicated.

3. Procedural Application of "Reasonable Efforts" Requirement

In connection with the application of the "reasonable efforts" requirement of the law from a procedural standpoint, attention is directed to the procedure described in the Chief of Benefits' Memorandum No. 153, DA 26, subject: "Procedure for Periodic Reinterviews," dated June 30, 1954.

4. Requirement of "Reasonable Efforts to Obtain Work" With Respect to Claimants Fifty-five Years of Age and Over

It has become increasingly apparent that present labor market conditions are such that the prospects of obtaining work are not generally favorable to persons fifty-five years of age and over. Where there is an adequate supply of labor among the younger element of the labor force, the older element is inevitably pushed into the outer fringe of the labor pool. Since we recognize that persons fifty-five years of age and over find it difficult to obtain work through the medium of independent search, it is undesirable to require such persons to make an independent search for work. As stated above, "it is not intended to require claimants to make futile trips to employers' hiring offices just for the sake of building up a record of job seeking." In view of the status of the elderly worker in today's labor market, the conclusion is reached that the maintenance of an active registration with the Connecticut State Employment Service constitutes "reasonable efforts to obtain work" with respect to all claimants fifty-five years of age and over.

Very truly yours,

George J. Walker

George J. Walker
Director

Approved:

Joseph J. Gibbons
Executive Director

Prepared by Special Review Unit

Let

Pl. Ex. 17

STATE OF CONNECTICUT
LABOR DEPARTMENT
Employment Security Division
Unemployment Compensation Department

92 Farmington Avenue
Hartford 15, Conn.

R & A Bulletin No. 20
August 20, 1958

TO: ALL U. C. MANAGERS AND FACT FINDING EXAMINERS

1. Cases have come to our attention in which the claimant has been denied benefits because of an unreasonable restriction on his availability and, upon filing a claim for the week immediately following the disallowed claim, he advises the examiner of his removal of the restriction in question. The claimant's claim series is then reinstated and his eligibility is established.

In cases such as that described above, it is sometimes true that if the claimant had been advised by the examiner that the restriction which he has imposed on his availability will require a finding of ineligibility, the claimant would have immediately reconsidered his employment desires and withdrawn his stated restriction. The withholding of benefits from the claimant for one week without advising him of the reason for such action before the issuance of the decision and the granting of benefits for the next week in consequence of his declaration of compliance with the availability requirement after being notified of the reason for his ineligibility is neither an equitable nor a realistic method of handling this situation. In any case in which the claimant's expressed restriction on his availability is such as to compel a finding of ineligibility, the fact finding examiner must orally advise him, before issuing a written decision of disapproval, that the restriction in question has the effect of making him ineligible for benefits. If the claimant, despite such advice, adheres to the restriction, a decision of disapproval is in order. If, however, the claimant reconsiders his employment desires and, in the light of the examiner's advice, withdraws his restriction, thereby putting himself in compliance with the availability requirement, an award of benefits is in order.

R & A Bulletin No. 20
August 20, 1958

2. Cases have been observed in which the claimant is initiating a claim series after childbirth and despite the fact that the ending date of the two month period after childbirth falls within the first benefit week for which a claim is filed, such claim is approved by the local office examiner. The approval of such claim is contrary to law.

Where the claimant is claiming benefits two months after childbirth, the first week for which she may be eligible for benefits is the week which, in its entirety (exclusive of Sunday), is beyond the ending date of the two month period following the date of childbirth. Thus, if the two month period ends on Monday of the first week for which the claimant claims benefits, the claimant is ineligible that week.

Morris E. Tonken
Review and Appeals

Approved:

Joseph J. Gibbons
Executive Director

Pl. Ex. 27

FORM ESD-38 (REV. 8-70)

INTEROFFICE MEMORANDUM

TO: ALL LOCAL OFFICE MANAGERS, FIELD AND CENTRAL OFFICE SUPERVISORS DATE: JUNE 30, 1972

FROM: John F. Pescatello, Chief of Benefits

SUBJECT: CONTINUED CLAIM WORK EFFORT INFORMATION FORM (UC 45)

The form is to be used for all intrastate continued claims. It is to be given to all claimants and they will be required to return it on their next scheduled visit. Completed forms will be retained in the Claim Record Card and are to be used as an indication of the claimant's search for work. A fact-finding interview should be scheduled, as space and time permit, for those claimants that indicate that their search for employment or availability is questionable. Checks should not be issued to claimants that show they did not look for work (unless there is a valid non-disqualifying reason) without a factfinding interview that clearly establishes their eligibility.

Lines should not be held up for claimants to fill out this form. It should be completed and signed by the claimant before reporting to the office.

Claimants should be informed that employers are not required to complete or make entries on this form.

After the initial distribution supplies should be reordered from the Stock Room.

This procedure is to be implemented immediately upon receipt of the forms.

John F. Pescatello
Chief of Benefits

APPROVED: Theodore W. Hatcher
Theodore W. Hatcher
U.C. Director

FORM UC-48
(6-70)

CONN. UNEMPLOYMENT COMPENSATION DEPT.
CONTINUED CLAIM WORK EFFORT INFORMATION

Pl. Ex. 27

PERIOD COVERED:
FROM _____ TO _____

NAME _____
(Last) (First) (Middle)

S S NO _____

_____
(Usual Occupation)

During the WEEK(S) CLAIMED, what did you do to find work?
This form must be completed and presented with your payment book and plate.
Employers are not required to complete or make entries on this form.
a. PRINT CAREFULLY and list below employers, labor unions, and other places contacted. (Use other side also.)
You are expected to make a realistic and substantial effort to seek employment weekly.

DATE	PLACES CONTACTED	ADDRESS	PERSON TO WHOM YOU SPOKE	TYPE OF WORK SOUGHT	RESULTS

b. If you did not look for work, explain why (Use other side, if needed) _____

I hereby certify that the statements made in connection with this claim are true. I understand that the law provides penalties for false statements made to obtain benefits.

_____ _____
(Date) (Claimant's Signature)

J. Egan
nistrator
d E. Hausman
utive Director

STATE OF CONNECTICUT
LABOR DEPARTMENT
EMPLOYMENT SECURITY DIVISION
UNEMPLOYMENT COMPENSATION DEPARTMENT

92 Farmington Avenue
Hartford 15, Conn.

Pl. Ex. 28 b

SRU BULLETIN NO. 8
May 19, 1953

To: All U. C. Managers and Fact Finding Examiners

1. Special Review Unit has observed numerous local office decisions denying benefits for restricted availability which cannot be said to be supported by the facts appearing on the accompanying fact finding reports. These are cases in which the findings of fact as presented in the fact finding report raise nothing more than a mere inference or an implication that the claimant is imposing a restriction on her availability - and it must be remembered that a decision based on inference or implication is as vulnerable as a decision based on presumption. The fact finding reports in these cases are completely defective since they do not contain complete coverage of the question whether an actual restriction exists, and, conversely, the decisions are questionable since they are not supported by the facts appearing in the fact finding reports. For example:

FFR: "Clt has been unemployed for 2 months - seeking work as a grinder or machine operator - believes she should receive at least $1.15 an hour."

Decision: "By limiting your employment prospects to work paying at least $1.15 an hour, you have placed so severe a restriction on your availability for work as to render yourself, in effect, unavailable for work and therefore ineligible for benefits."

The mere fact that the claimant believes herself to be entitled to at least $1.15 an hour cannot compel a sound conclusion that the claimant will not accept employment which pays less than that figure. Hence, her statement does not support a conclusion that she has imposed a restriction on her availability. The contents of the above quoted report are a sufficient indication to a reviewer that the examiner, in the course of interviewing the claimant, failed to pursue his line of questioning to an ultimate conclusion. He obviously failed to ascertain from the claimant whether she will or will not accept employment paying less than $1.15 an hour. In the absence of a statement to this effect in the fact finding report, there is no support for the examiner's conclusion that the claimant has unreasonably restricted her availability.

In fact finding reports on the issue of restricted availability, such expressions as "prefers first shift," or "would like job from 11 A.M. to 3:30 P.M.," or "wants job within walking distance of home," or "would rather not work for less than .95 an hour," should not appear without an explanatory elaboration, obtained from the claimant, as to whether the stated preference actually constitutes a specific limitation on the employment the claimant is willing to accept. In fact, such reports must contain an unequivocal statement whether the claimant will or will not accept employment outside his stated preference.

2. Despite previous discussions of the import of General Letter 163, cases still appear in which local offices have failed to observe the procedural requirements prescribed in that letter relative to the transmittal of Additional Claims attached to the fact finding reports directly to Special Review Unit, where the Additional Claim is filed under such circumstances as to invoke application of General Letter 163. We have observed recurring instances of "163" cases in which local offices have transmitted the Additional Claim and fact finding report, each through normal channels, with the result that an unnecessary merit rating charge problem is created in Central Office.

It is recommended that the above mentioned transmittal procedure be rehearsed at the next training session in each local office.

Morris E. Tonken
Special Review Unit

Approved:

Howard E. Hausman
Executive Director

John J. Egan
Administrator
Howard E. Hausman
Executive Director
George J. Walker
Director

STATE OF CONNECTICUT
LABOR DEPARTMENT
EMPLOYMENT SECURITY DIVISION
UNEMPLOYMENT COMPENSATION DEPARTMENT

92Farmington Avenue
Hartford 15, Conn.

SRU BULLETIN NO. 10
November 19, 1963

Pl. Ex. 28 c

TO: ALL U.C. MANAGERS AND FACT FINDING EXAMINERS

1. SRU has observed repeated cases in which a fact finding examiner has approved a claim for benefits filed by the claimant after a prolonged period of illness or serious disability and in the fact finding report which is submitted as a confirmation of the claimant's eligibility no reference is made to a medical certification of the claimant's physical ability to work. The burden of proving his eligibility for benefits rests with the claimant and the responsibility of eliciting such facts as are necessary for the claimant to sustain that burden rests with the fact finding examiner. Should there be any doubt of the claimant's physical ability to work, the examiner is remiss in his responsibility if he approves the claim without having required the claimant to present such evidence, if obtainable, as will dispel the doubt. Thus, in any case in which the nature of the claimant's ailment is such as to create a reasonable doubt of his employability or physical ability to work, particularly where he has been under medical care for a prolonged period of time, he should be required to produce a statement from his physician attesting his recovery and ability to work. Such certification must be incorporated into the fact finding report.

2. Where the claimant has retired from his last employment voluntarily and without having asked his employer for a change of work, there is a prima facie presumption of unavailability. To establish his eligibility for benefits, the claimant must satisfactorily rebut this presumption by showing reasonable efforts to obtain work and freedom from unreasonable restrictions on his availability. We have observed numerous fact finding reports written in such cases, which fail to present facts that prove a successful rebuttal of the presumption of unavailability. The bland statement "Actively seeking work" is clearly inadequate to support a finding of eligibility. The report must specifically enumerate the employers whom the claimant has contacted, the dates such contacts were made, and the type of work claimant was seeking. The report must further cover the entire area of possible restrictions on availability--that is, whether there are any restrictions as to wages, hours, or occupation.

   In view of the fact that a voluntary retirement creates a prima facie presumption of unavailability, fact finding examiners are cautioned to exercise particular care in investigating claims filed by voluntarily retired persons, with a view toward establishing such facts as are required for the claimant to rebut the presumption of his unavailability.

3. Where a female claimant files for benefits after childbirth and, by her own admission, has not earned the required $100 which would be necessary to establish her eligibility, the question of her availability is not in issue. However, SRU has observed repeated fact finding reports in such cases in which the examiner has presented a detailed description of child care provisions, absence of restrictions on availability, etc., which factors are, at the moment, irrelevant to a determination of the claimant's eligibility. Since, in such cases, the claimant's availability or ability to work is not

in issue, facts bearing on her availability or ability to work have no place in the fact finding report and should not appear in the report. Coverage of availability and ability to work in such cases is entirely unnecessary and represents a waste of the fact finding examiner's time.

Morris E. Tonkon
Special Review Unit

Approved:

George J. Walker
Director

STATE OF CONNECTICUT
LABOR DEPARTMENT
Employment Security Division
Unemployment Compensation Department

Pl. Ex. 28 d

92 Fairfield Avenue
Hartford 15, Conn.

SEV BULLETIN NO. 96
April 16, 1956

TO: ALL U. C. MANAGERS AND FACT FINDING EXAMINERS IN LOCAL OFFICES

1. The recent re-evaluation by central office personnel of local office evaluations of fact finding reports and decisions reveals that progress has been made in the continuing drive toward improvement of our fact finding and decision making operations. It is our observation that the degree of improvement in the decision writing operation has been considerably more extensive than that in the writing of fact finding reports. Observation of the content of local office written determinations shows positive evidence of an improvement in the performance of this phase of our operations. As a result of the local office adoption and use of the criteria introduced at the central office training sessions that were conducted last fall, our local office written determinations are now found to be more expressive, more meaningful, and more individualized than they have been in the past. It is expected that further progress will be achieved by continuing attention being directed by managers and fact finding examiners to achieving a more complete compliance with the basic elements and requirements of decision writing as they are presented in the "Manual on Writing Non-Monetary Determinations."

2. Evaluation of the fact finding reports discloses the following areas of inadequacy which require special attention:

a. Clarity of presentation

There is still a tendency on the part of some examiners to report facts in fact finding reports with a degree of vagueness and indirection with the result that, where this occurs, facts in the fact finding reports are not articulate and precise. There is an urgent necessity for required facts to be recorded in fact finding reports in direct, unequivocal, and positive language so that there is no room for conjecture as to the meaning or purport of such facts in relation to the whole case.

b. Sufficiency of facts

This is found to be a problem particularly in cases involving quits and restricted availability.

Where there is an intimation that the claimant quit his job for more than one reason, one disqualifying and the other not, the contents of fact finding reports in such cases often suggest a failure by the examiner to explore the surrounding circumstances with a view toward determining which was the motivating reason for the quit. There is room for improvement in interviewing technique in this area.

SRU BULLETIN NO. 16
April 16, 1956

Fact finding reports in cases in which the claimant has been denied benefits because of a restriction on his availability are frequently found to lack such facts as are necessary to show that the restriction in question is an unreasonable one - that is, that the nature of the restriction is such that it constitutes a serious and substantial impediment to claimant's employability. In such cases, the conclusion reached and declared by the examiner is vulnerable since it is not supported by facts in the fact finding report. This type of situation points up a need for improvement in the process of recording the facts, if not in the interviewing technique.

c. Exhaustion of Sources, Rebuttals, etc.

The requirement of an opportunity for rebuttal is too often ignored in cases in which claimant and employer have offered inconsistent versions of the circumstances of a separation. This area is one of vital importance and merits close attention and correction since the validity and propriety of decisions is often affected by the denial of an opportunity for rebuttal.

Morris E. Tonken
Special Review Unit

Approved:

George J. Walker
Director

STATE OF CONNECTICUT
LABOR DEPARTMENT
Employment Security Division
Unemployment Compensation Department

Pl. Ex. 28 e

92 Farmington Avenue
Hartford 15, Conn.

R & A Bulletin No. 22
May 13, 1959

TO: ALL U. C. MANAGERS AND FACT FINDING EXAMINERS

1. The "Comment" section of the fact finding report form is intended to afford the fact finding examiner an opportunity to include in his report any material which is not factual and therefore is not a part of the factual content of the report itself but which may have been utilized by the examiner in the process of arriving at his decision. For example, the "Comment" section may quite appropriately carry the examiner's personal remark concerning a doubt in his mind of the claimant's credibility and an explanation of the reason for that doubt. There are numerous other entries which may well appear in the "Comment" section, depending on the peculiar facts or nature of the case that is the subject matter of the report. There is one entry, however, that must be included as a "Comment" in all fact finding reports in which the examiner is called upon to employ a process of reasoning in arriving at his decision: there must be a brief description of the reasoning used by the examiner in resolving the issue at hand. It is emphasized that a description of the reasoning must be inserted in the "Comment" section where the reasoning has led to an approval of the claim in issue as well as where a decision of disapproval is being issued.

   Fact finding examiners are urged to observe the above stated requirement in completing their fact finding reports.

2. The Review and Appeals Section has observed numerous decisions in which the decision insert, in referring to a specific date, identifies the month by a numerical designation - e.g., "5/13/59." It has also been observed that the period of ineligibility in decision letters often describes the months by the use of numerical designations - e.g., "5/3/59 to 6/6/59." Such numerical designations of months are not an approved method of describing dates in formal letters and their use in decision letters, or in any correspondence with persons outside the agency, is to be discontinued. In such forms of correspondence, months of the year are to be spelled out in full.

3. Recent fact finding reports on labor disputes have been found to be inadequate in their coverage of necessary factual material. As a result, the Review and Appeals Section has frequently found it necessary to request from the local office a supplemental report which would include factual information omitted in the original report. Where this occurs, the time lapse in rendering the determination is extended unnecessarily.

   Fact finding reports on labor disputes are to be carefully reviewed by local office managers before transmittal to the Review and Appeals Section. The purpose of the review is to insure that the report contains a complete coverage

of all factual information necessary for a determination of the issue. In connection with this activity, attention of the managers as well as the fact finding examiners is directed to the Fact Finding Guide Cards on "Labor Dispute (Strike)" and "Labor Dispute (Lockout)".

Morris E. Tonken
Review and Appeals

Approved:

Harold E. Hills
Director

FORM ESD-88
(REV. 9-70)

INTEROFFICE MEMORANDUM

Pl. Ex. 29 m

TO: ALL LOCAL OFFICE MANAGERS, FIELD AND CENTRAL OFFICE SUPERVISORS

DATE: October 6, 1972

FROM: Theodore W. Hatcher, U.C. Director

SUBJECT: CLAIMANTS MUST BE ADVISED OF THEIR RIGHTS

At the recent meeting of managers, Commissioner Fusari and our Executive Director Mr. Eisenman reiterated and confirmed the policy of this department.

Claimants are to be fully advised of their rights, informed clearly and unequivocally what section or sections of the law are involved, and they should be informed of what they are expected to do by way of job search and exposure to the labor market. This is not to say that claimants should be told how to "beat the system", but a claimant under the law, as interpreted by many court decisions, is entitled to know the law and know why he or she is being declared ineligible or disqualified for benefits.

If a person restricts his availability or indicates a job type preference which turns out to be restrictive, the claimant should be told that he or she could disqualify himself or herself.

Now that the claim load is at a lower level we expect that all claimants will receive a Benefits Rights Interview and that periodic reinterviews are accomplished.

Please see that these instructions are given to all employees that are involved.

Theodore W. Hatcher
U.C. Director

TWH:EJT:im

FORM ESD-39 (REV. 9-70)

INTEROFFICE MEMORANDUM

Pl. Ex. 29 o

TO: All U.C. Managers and Field Supervisors DATE: Nov. 16, 1972

FROM: Chief of Adjudications

SUBJECT: Advising and Counseling Claimants

The following directive has been received from Executive Director Carl D. Eisenman:

> "A directive was previously issued requiring local office personnel of both ES and UC to advise claimants and clients when their conversation, course of conduct, or other acts or omissions may result in disqualification or declaration of ineligibility. Since the directive has been issued, there have still been instances where, for example, senior citizens were not advised that their Social Security restriction would result in disqualification and where geographical preferences, as opposed to restrictions, resulted in disqualifications. Please reemphasize that we are here to serve the public and to properly administer the law and that proper administration requires complete candor and fairness with all. Questions should not be phrased with a result in mind. If, during questioning, a claimant appears to be unaware of the applicable provision of the law, he should be advised of it."

Local office managers and fact finding examiners are requested to comply with Mr. Eisenman's directive to the fullest extent and without further delay.

Morris E. Tonken
Chief of Adjudications

Approved:

Theodore W. Hatcher
Director

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

LARRY STEINBERG, CECIL PASKEWITZ, DELIA TRIANA, AND JUAN MIRANDA, et al, PLAINTIFFS,	CIVIL ACTION NO. 15104
v	May 12, 1973
JACK A. PUSARI, Commissioner of Labor, The Administrator, The Unemployment Compensation Act, State of Connecticut, DEFENDANT.	

PLAINTIFFS' EXHIBIT 31

TIME LAPSE ON DECIDING APPEALS TO THE UNEMPLOYMENT COMPENSATION COMMISSION

This exhibit provides a more detailed breakdown of data provided in Section B,#6 of U.S. Department of Labor Form E.S.- 221 (Plaintiffs' Exhibit 1) for the month ending December 31, 1972. Form E.S.-221, Part B,#6 for December, 1972 provides a breakdown of the lapsed time from the date a claimant filed an appeal to the date the Commissioner's written decision on the appeal was mailed. Plaintiffs' Exhibit 31 provides a more detailed " Time Lapse" breakdown of the 461 intrastate appeals disposed of by written decision during December 1972. The 72 interstate appeals are not included in this exhibit since these cases generally involve even longer delays encountered in obtaining work and wage records from states in which the claimant worked before moving to Connecticut.

[2]

Plaintiffs Exhibit 31 (cont.)

The data in this exhibit was obtained in two ways. The figures from Unemployment District #4 were supplied, pursuant to subpoena, by the Chairman of the Unemployment Compensation Commission, Timothy J. Loughlin, at his deposition on February 8, 1973, at Bridgeport. The data for the remaining Districts was compiled on February 16, 1973, per agreement between Plaintiffs' attorneys and Mr. Loughlin, from Unemployment Compensation Commission records by clerical personnal under the supervision of plaintiffs' attorneys.

3

Plaintiffs Exhibit 31 (cont.)

TIME ELAPSED BETWEEN DATE CLAIMANT FILED APPEAL AND DATE UNEMPLOYMENT COMMISSIONER MAILED DECISION TO CLAIMANT

DIST.#	0-30	31-45	46-75	76-100	101-125	126-150	151+	Total
1	-	-	7	17	56	49	18	147
2	-	-	-	10	32	18	17	77
3	-	-	1	3	-	16	5	25
4	1	2	1	4	43	54	17	122
5	-	-	-	1	-	10	79	90
TOTAL	1	2	9	35	131	147	136	461
PERCENTAGE								
1	-	-	4.8	11.6	38.1	33.3	12.2	
2	-	-	-	13.0	41.5	23.4	22.1	
3	-	-	4.0	12.0	-	64.0	20.0	
4	0.8	1.6	0.8	3.3	35.2	44.3	14.0	
5	-	-	-	1.1	-	11.1	87.8	
TOTAL	0.2	0.4	2.0	7.6	28.4	31.9	29.5	

Pl. Ex. 32

AFFIDAVIT

I, DELIA TRIANA, being duly sworn, depose and say:

1. I reside with my husband and four children at 153 Lewis Street, Bridgeport, Connecticut.

2. I was recently laid-off from my job at the General Electric manufacturing plant in Bridgeport, Connecticut because of lack of available work.

3. Immediately thereafter, I applied for unemployment compensation benefits at the Bridgeport Office at 67 Washington Avenue.

4. I was certified as eligible by the unemployment compensation office and received $61.00 a week unemployment benefits for three weeks, ending the week of July 10th, 1972.

5. I do not understand written or spoken English and since the unemployment office did not supply an interpreter on the occasion of my visits, I was required to bring and was told to bring my own interpreter. I was required to bring one of my young children to the unemployment office when I visited.

6. In early July, I was told, through my child interpreting, that I must take one of the forms that was given to me and get prospective employer to sign the card indicating I had visited and asked for employment.

7. I had the cards signed by several employers during the period after July 10th, 1972 but on both occasions when I went to the unemployment office (at two weeks intervals) I was told that not enough employers had signed the card. I did not fully comprehend what was being asked of me and again asked for an interpreter and was told to get one for myself.

8. In late July, I was told that I should have six employers sign the card. My next appointment at the unemployment office was on August 7th, 1972 and on that occasion my card had been signed by six employers stating that I had applied for work at their offices.

9. On August 7th, 1972 I was again refused an unemployment check and was told that while I had six employers sign the card, they had all signed the card on the same day and that this disqualified me from unemployment benefits since I had not spread the six employers out over the two-week period. I tried to explain to the officials that since I did not speak English, I could only go on Fridays when one of my children could accompany me to do the interpreting. I was told that this was unsatisfactory and that I was disqualified indefinitely from receiving benefits from July 9th, to an indefinite period because I had not used "reasonable effort" to find employment.

10. On or about August 7, 1972 I filed an appeal but, as of yet, no date has been set.

DELIA TRIANA

I, Margarita Torres, first being duly sworn, do depose and say that:

1. I am fluent in the English and Spanish languages.

2. On this date, I translated the foregoing affidavit from English to Spanish in the presence of the affiant, Delia Triana.

3. The affiant, Delia Triana, indicated to me that she understood this affidavit and affirmed the truth of the matters contained herein.

MARGARITA TORRES

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Bridgeport, September 12, 1972

Personally appeared, Delia Triana, signer and sealer of the foregoing affidavit and Margarita Torres, an interpreter who made oath to the truth of the foregoing matter before me.

JOHN M. CREANE
Commissioner of the Superior Court

Pl. Ex. 32

SUPPLEMENTARY AFFIDAVIT OF DELIA TRIANA

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Bridgeport, October 18, 1972

I, DELIA TRIANA, being duly sworn, depose and say:

1. I am an applicant for intervention in this action and a copy of my first affidavit, dated September 12, 1972, is on file with this Court. My unemployment benefits were terminated without a hearing on or about August 7, 1972 at Bridgeport office and I appealed this decision.

2. To this date I have not received a hearing before the Unemployment Commissioner, more than two months from the date of my appeal.

3. I recently received notice that my appeal was scheduled at 3:20 P.M. on October 17, 1972 before the Unemployment Commissioner in Bridgeport. Mr. Primitivo Comacho and Mr. Juan Miranda received a notice scheduling their appeals for the same date, time and place.

4. We went to the hearing with our attorney, Mrs Creane, but there was not time for my hearing to be started because of the fact that our three hearings were scheduled at the same hour, 3:20 P.M. and the fact that the Unemployment Department representative, Mr. Blair, left at 4:20 P.M. The Commissioner asked Mr. Blair if he could stay to finish all three hearings but Mr. Blair said he would not as he would not be paid overtime.

5. Mr. Miranda's hearing was completed but the Commissioner told me that my hearing would have to be re-scheduled for a later date in October.

6. I found work at Lorraine's in Bridgeport after not receiving unemployment benefits for more than a month but I was laid off again on October 7, 1972.

7. I again went to the Unemployment office on October 10, 1972 in Bridgeport to file a new claim but I was told my records are in Hartford.

8. I have another appointment at the Bridgeport Unemployment Office on October 30th and I am making every effort to find work before then but I am very much afraid that if this Court does not help me I will not get any checks no matter how hard I try to find work. No one at the Unemployment Office tells you what to do to get your benefits. They just let you talk for a few seconds and then say "No checks. You'll get a letter in the mail. Good-day". Once any worker disqualifies you, every other worker will do the same thing to you when you come in at a later date.

9. This affidavit has been prepared with the assistance of my attorney and an interpreter and accurately reflects my experience and opinions.

DELIA TRIANA

Subscribed and sworn to before me this 18th day of October, 1972.

JOHN M. CREANE
Commissioner of Superior Court

Pl. Ex. 32

AFFIDAVIT

I, JUAN MIRANDA, being duly sworn, depose and say:

1. I am 37 years old and reside with my wife and two children at 749 Hallett Street, Bridgeport, Connecticut. My social security number is 581-64-7882.

2. In June, 1972 I lost my job because the Felix Brass Company, 46 Brookfield Avenue, Bridgeport, closed permanently.

3. Immediately thereafter I applied for unemployment compensation benefits at the Bridgeport district office at 67 Washington Avenue.

4. I was receiving $72.00 per week as compensation until the end of August, 1972 when my checks were withheld because I allegedly was not making enough effort to find work.

5. I speak and read very little English. At no time was any explanation given to me either in Spanish or English by anyone at the unemployment office as to what my responsibilities were in making efforts to find work.

6. The Bridgeport office did not give me notice and an opportunity for a hearing before cutting off my benefits. I was notified that my benefits were stopped after speaking with an employee of the department on August 30, 1972.

7. I was told that I had not visited enough prospective employers and was not given a chance to rebut this allegation.

8. Unemployment compensation benefits are the only source of income for my family at the present time.

9. I have made a diligent effort to find work, but as of the date of this affidavit I have not received any unemployment benefits since being cut-off on August 30.

10. I have lost all of the benefits due me for this period because I was never informed what my obligations were and was not given a prior hearing.

11. At no time did I speak with any Spanish speaking employee of the department or receive any written communication from them in Spanish.

12. I believe the entire unemployment compensation procedure is unfair and discriminates against those, like myself, who have trouble understanding the English language.

13. This affidavit has been prepared in cooperation with my attorney and an interpreter and accurately reflects my experiences and opinions.

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Bridgeport September 6, 1972

JUAN MIRANDA

Personally appeared Juan Miranda, signer of the foregoing affidavit, who swore to the truth of the above before me.

DONALD H. TAMIS
Commissioner of the Superior Court

Pl. Ex. 32

SUPPLEMENTARY AFFIDAVIT OF JUAN MIRANDA

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Bridgeport, October 18, 1972

I, JUAN MIRANDA, being duly sworn, depose and say:

1. My unemployment benefits were terminated effective August 13, 1972 as more fully explained in my previous affidavit in this case, dated September 6, 1972. I appealed this decision and my appeal was heard before the Unemployment Commissioner on October 17, 1972. I have no idea when a decision will be rendered.

2. I have been without income for myself and my family since my unemployment benefits were terminated in August. I have no present means of supporting my family, other than handouts from other people. I am unable to pay my rent and I am unable to buy enough food for my family. I have tried to find work everywhere but the jobs are not there.

3. Each two weeks since my benefits were terminated I have gone to the Unemployment Office and showed a fully completed form UC-45, showing the places I had looked for work during the two weeks. Each time the worker barely looks at the card and tells me I get no checks. Sometimes the worker simply tells me to wait until my initial appeal is heard. On October 11, 1972 as I testified at my appeal hearing on October 17, the worker would not even take my written statement as to my efforts to find work.

4. The appeal hearing on October 17, was the first time I could tell my story and have someone listen but I don't know when he will decide my case because he said he is a very busy man with many cases. Even if I get my back benefits I know that I will never be treated fairly by the workers at the Unemployment Office on Washington Avenue and they will stop my checks again right away.

5. This affidavit has been prepared with the assistance of my attorney and a translator and accurately reflects my experience and opinions.

JUAN MIRANDA

Subscribed and sworn to before me this 18th day of October, 1972.

JOHN M. CREANE
Commissioner of Superior Court

Def. Ex. A

AFFIDAVIT

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss Wethersfield, Conn. October 17, 1972

I, Carl D. Eisenman, being first duly sworn according to Law, state the following:

1. I am the Executive Director of the Employment Security Division of the Connecticut State Labor Department, and as such, I am familiar with the laws and regulations concerning the adminisration of the Unemployment Compensation Law. Pursuant to State Law, (Sec. 31-237 G.S. Conn.) I administer the law subject to the supervision of the State Labor Commissioner.

2. I am also familiar with the federal laws concerning unemployment compensation with which Connecticut laws must conform if Connecticut is to receive the federal funds necessary to administer the unemployment compensation program.

3. I am also familiar with federal directives in the form of policy letters, especially those concerning the type of hearing to be given claimants whose eligibility for benefits has already been determined, but who are subject to termination of benefits for one reason or another.

4. On or about November 23, 1971, I received Unemployment Insurance Policy Letter No. 1145, dated November 12, 1971, which contained an attachment entitled "Procedures for Implementing the *Java* Decision Requirements." On page 14 of this attachment, Section VI A states:

"*Issues Arising During a Claim Series*

> When an issue arises during a claim series and the claimant is the only interested party, no substantive changes from existing procedures are required. A typical situation would involve a claimant who, during his regular interview, reports an illness during the week being claimed that might warrant denial of benefits for the week. All necessary actions can be taken on the spot, and the claimant may be informed of the issues and of his right

to hearing. Fact-finding can then take place, and a determination can be made.

When an issue arising during the claim series involves any interested party in addition to the claimant, notice and an opportunity to be heard must be given to such other party. The determination of the issues may not be made until such notice and opportunity has been provided. Such determination will be considered on time within the meaning of the Court's requirement for promptness if issued no later than the end of the week following the week in which the issue arises."

5. On or about June 22, 1972, I received Unemployment Insurance Policy Letter No. 1189, dated June 7, 1972, which concerned the *Torres and Dinger* Decisions by the U.S. Supreme Court. On page 2 of said letter, it is stated that "The decisions in *Torres and Dinger* support the position the Manpower Administration has taken that informal predetermination procedures are sufficient and that there need not be a "due process" hearing before a determination or redetermination suspending or terminating benefits."

6. It is and has been the policy of the Unemployment Compensation Department, statewide, to provide informal hearings pursuant to the U.S. Department of Labor directives and the requirements of the *Java* decision in those cases where benefits are terminated, suspended, or reduced. In such cases where another interested party is involved such a hearing is held, but only after the interested party also has notice and is given an opportunity to attend.

7. Eligibility for benefits is determined on a weekly basis, pursuant to statute and case law, even though the reporting for interviews and pickup of checks may be done bi-weekly. Thus, a claimant could be determined ineligible for benefits one week, thus not receiving his check, and then be determined eligible the following week, receiving his check for that week.

CARL D. EISENMAN
Executive Director

Subscribed and sworn to before me this 17th day of October, 1972.

Commissioner of the Superior Court

Def. Ex. B

STATE OF CONNECTICUT

LABOR DEPARTMENT — EMPLOYMENT SECURITY DIVISION

UNEMPLOYMENT COMPENSATION
DEPARTMENT

AFFIDAVIT

I, Petra Collazo, being first duly sworn according to Law, state the following:

1. I am an Employment Security Aide II, working in the Bridgeport office of the State Unemployment Compensation Dept.

2. I speak Spanish fluently and part of my duties include acting as interpreter for various claimants who file for benefits in this office.

3. On June 27, 1972 and on August 8, 1972, I gave complete Benefit Rights Interviews to Delia Triana, SS#048-48-0259. That is, I fully explained to her, in Spanish, her rights and obligations concerning her collection of benefits.

4. On July 24, 1972, I interpreted for Delia Triana during her regularly scheduled interview. The information she gave then was apparently the basis for her disqualification.

Dated at Bridgeport, Connecticut, this 13th day of 1972

/s/ Petra Collazo

Subscribed and Sworn to before me, Donald E. Wasik, the undersigned officer.

/s/ Donald E. Wasik
Donald E. Wasik
Commissioner of Superior Court

DEW/b

STATE OF CONNECTICUT

OBERT K. KILLIAN
ATTORNEY GENERAL

MAILING ADDRESS:
EMPLOYMENT SECURITY DIVISION (AG-71)
TEL: (203) 566-3830

ATTORNEY GENERAL'S OFFICE
HARTFORD, CONNECTICUT 06115

May 18, 1973

The Honorable J. Joseph Smith
The Honorable M. Joseph Blumenfeld
The Honorable Jon O. Newman
United States Courthouse
450 Main Street
Hartford, Connecticut 06103

Re: Larry Steinberg, et al vs. Jack A. Fusari, Commissioner of Labor, The Administrator, Unemployment Compensation Act. Civil Action No. 14,104.

Your Honors:

This letter is to notify you of a new position which my client, the defendant Administrator in the above-named case, is now taking with regard to the plaintiff Cecil Paskewitz. Hopefully, this will eliminate some of your work in going over the massive amount of material in this file.

As you know, the factual circumstances regarding Mr. Paskewitz's claim are different from those of the other three named plaintiffs. While these three were given an informal hearing concerning a non-monetary determination, namely eligibility, Mr. Paskewitz was given no hearing at all. No hearing was given because the issue was a monetary one only; that is, it dealt only with the initial question of entitlement. While this is a relatively automatic determination which is based solely on whether or not the claimant has sufficient wage credits, and is an action which was taken by the defendant as trustee of the unemployment compensation fund which he is obliged to protect, we now recognize that redeterminations are sometimes necessary because of error or misinformation, and that due process would not be given such a claimant unless he were given a hearing.

Accordingly, the defendant now concedes in this case that its former policy in not providing a hearing in such cases may violate the due process clause of the 14th Amendment to the Constitution. It is submitted, however, that the statutes pursuant to which said policy was followed are not unconstitutional. The defendant, therefore, effective immediately is changing its policy so that when such questions arise in the future, unemployment compensation benefits will continue to be paid until a written notice is sent to the claimant notifying him to appear at a place, date, and time certain for a hearing, and advising him of the particular issue raised, and of his right to be represented by counsel.

Counsel for the plaintiffs have already been notified by telephone of our change of position, and a carbon copy of this letter is being sent to both Attorneys Creane and Kelley. In addition, we will attempt to draft a consent order to be filed with our brief for the Court to consider in rendering its decision.

I believe it imperative to advise the Court that although this claimant's rights may have been violated because benefits were terminated without a hearing, the Court should be mindful of the fact that Mr. Paskewitz nevertheless received 26 weeks of payments to which he was not legally entitled. As of this writing, it appears certain that no attempt will be made to recoup this overpayment. Thus, this claimant has received and will be able to keep $2,782.00 in benefits (including dependency allowance). It would appear, therefore, that this is a deminimus violation.

Your indulgence in this unusual presentation of this material will be greatly appreciated.

Respectfully submitted,

Robert K. Killian
Attorney General

By: Donald E. Wasik
Assistant Attorney General

DEW:msd
cc: John M. Creane, Esq.
Raymond J. Kelley
Sylvester Markowski, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

ATTACHMENT I

Proposed Consent Order

As part of any order which the Court may enter in rendering its decision in this case, the following is a proposed order which the Court may wish to consider.

"The defendant Administrator is hereby ordered to put into effect at once, if it has not already done so, the following policy: Whenever the defendant has reason to believe that a redetermination must be made either as to the question of entitlement itself or as to any change affecting the amount of unemployment compensation benefits, then before such a change can become effective, written notice of a hearing at a place, date and time certain must be sent to the claimant at his last known mailing address, said notice apprising the claimant of the issue or issues to be raised at said hearing, and advising him that he may be represented by counsel at said hearing, and a written notice of the decision after said hearing must be mailed to the claimant."

DEFENDANT

By: ROBERT K. KILLIAN
Attorney General

DONALD E. WASIK
Assistant Attorney General

(Certification Omitted in Printing)

AFFIDAVIT

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss Wethersfield, Conn. June 5, 1973

I, Theodore W. Hatcher, being duly sworn according to Law, state the following:

1. I am the Director of the Unemployment Compensation Department of the Employment Security Division of the Connecticut Labor Department, and as such, I am familiar with the laws and regulations, policies, and procedures concerning the administration of the Unemployment Compensation Law.

2. I am also familiar with the Department's procedures when a local office receives a route slip from the Employment Service Office indicating that a claimant has refused a referral to a suitable job or has refused a suitable job which was offered. In such cases, a notice is sent to the claimant, unless he is scheduled to appear within two days, said notice scheduling a hearing for a date and time certain and advising claimant of the reason for the hearing and that he can bring witnesses and be represented at said hearing. If the notice is not sent because the claimant is due to appear within two days, he is advised when he reports that he can have a hearing then or he can wait approximately five days. If a claimant asks for a later hearing and asks for his check in the meantime, a hearing is scheduled and he is given his check unless he has already given the examiner facts which would definitely disqualify him, i.e., he was in the hospital the last two weeks or was on a fishing trip for two weeks, etc.

If the information concerning the refusal of a suitable job comes from a prospective employer who is an interested party (one whose merit rating account has been charged because of the termination of the claimant's employment), a notice of the hearing is also sent to said employer.

THEODORE W. HATCHER, *Director*
Unemployment Compensation Department

Subscribed and sworn to before me this 5th day of June, 1973.

Commissioner of the Superior Court

UNITED STATES DISTRICT

DISTRICT OF CONNECTICUT

LARRY STEINBERG AND CECIL PASKEWITZ, ET AL AND DELIA TRIANA AND JUAN MIRANDA, INTERVENORS,	:	
VS	:	Civil 15104
JACK A. FUSARI, COMMISSIONER OF LABOR, THE ADMINISTRATOR, THE UNEMPLOYMENT COMPENSATION ACT, STATE OF CONNECTICUT	:	

Hartford, Conn.
May 14, 1973

PORTION OF TRANSCRIPT

BEFORE: HON. J. JOSEPH SMITH, U.S.C.J.
HON. M. JOSEPH BLUMENFELD, CHIEF JUDGE
HON. JON O. NEWMAN, U.S.D.J.

A P P E A R A N C E S:

FOR THE PLAINTIFFS:
JOHN M. CREANE, ESQ.,
412 East Main Street
Bridgeport, Connecticut

FOR THE DEFENDANTS:
DONALD E. WASIK, ESQ.
Assistant Attorney General
Hartford, Connecticut

JUDGE SMITH: Who is going to argue?

MR. CREANE: We have numerous stipulations, and a stipulation to an index of exhibits, which I believe your Honors have a copy of the list of exhibits, Plaintiffs' Exhibits, in your file, and there is a stipulation that -- as to the admissibility of all of the exhibits.

There was about a fourteen page stipulation as to facts which was mailed last week, but unfortunately went to Hartford and New Haven, but it is here today, but apparently no one has had an opportunity to review it ye t.

There is also an -- several additional stipulations and rather than putting the parties on to give live testimony, the parties have stipulated that previous affidavits which are on file with the Court may be made a part of this record at this hearing for all of the four named plaintiffs.

JUDGE SMITH: They may be received. How far do your exhibits go so far?

MR. CREANE: The stipulation is as to numbers, 1 through 30, your Honor. Included in that are numberous reports that are submitted to the Department of Labor, several depositions that were taken by the plaintiffs. We have a stipulation --

JUDGE BLUMENFELD: In this manilla folder --

MR. CREANE: They were all marked last Friday,

your Honor, and hopefully everything is in order. They were marked in the clerk's office.

JUDGE SMITH: Are these affidavits in addition to those?

MR. CREANE: They are in addition.

JUDGE SMITH: Mark them with 31.

MR. CREANE: Thirty-one is an additional exhibit, but Mr. Wasik wants to object to the relevancy of it, not to its authenticity but to its relevancy.

What it does is provide a breakdown on the time delay between the time a person files an appeal before the Unemployment Commissioner and the date he gets a written decision.

One of our earlier exhibits, I believe it is number 4, one of the forms that is submitted to the Department of Labor, the breakdown is up to 75 days and over. This is one of the facts that has been discussed in all of the litigation involving the issue before the Court as to how much of a time delay there is between the time you get some type of hearing at the local office and if you process a hearing before the Commissioner.

The period of delay has been considered relevant by all the Courts.

JUDGE SMITH: Is this the mean time over a certain period?

MR. CREANE: Yes, the time between the claimant's benefits are terminated, files an appeal and gets a written decision from the Commissioner after having its hearing.

JUDGE BLUMENFELD: Based on what, on examination of the records?

MR. CREANE: Yes. The Department, in Exhibit 4, breaks it down by up to 75 days and over. That is the final category on information submitted to the Department of Labor.

At the deposition of the Commissioner we asked him to supply a further breakdown on the above 75 days. He did it for one of the districts, and in order to save him time--

JUDGE BLUMENFELD: You need longer than 75 days to make your point.

MR. CREANE: We have it broken down to 150 days and over. There is no question as to the authenticity of the figures but Mr. Wasik apparently has an objection to the relevancy of the breakdown, on 31.

JUDGE SMITH: Mark it 31 for identification.

(Document marked Plaintiffs' Exhibit 31 for identification.)

MR. WASIK: Does the Court wish to hear argument?

JUDGE SMITH: Yes.

MR. WASIK: It is the defendant's position, your Honor, that happens after the hearing is not relevant as to the type of hearing that is given to the claimants at the administrative level. This is the crux of the plaintiffs' complaint, the type of hearing that they are given.

They claim that it is not " due process" type of hearing as required by Goldberg vs Kelly, so the delay after that hearing the defendants submitted is not relevant to the type of hearing that is given.

The appeal, when it is taken, goes to an unemployment compensation commissioner who is a member of the Unemployment Commission, which is a separate entity, apart from the Unemployment Department, which is the -- which the Commissioner is administrator of.

For those reasons we feel it is not relevant to the issue at hand.

JUDGE SMITH: It may be marked as a full exhibit. The objection is overruled.

MR. WASIK: Will the Court note an exception?

JUDGE SMITH: Exceptions are not necessary in our practice.

(Plaintiff's Exhibit 31 received in evidence.)

JUDGE BLUMENFELD: Your affidavits, are you stipulating that the witnesses would say what their affidavits say or that the facts in the affidavit are true?

MR. CREANE: The witnesses would say what is in the affidavits, your Honor.

MR. WASIK: The defendants at prior hearings submitted an affidavit of the Executive Director of the Department, Carl Eisenman; also an affidavit of one Petra Colaso, an interpreter, one who acted as interpreter in the Bridgeport office.

I believe these were marked as exhibits, I don't have the numbers, at the prior hearing, and I would offer them now.

JUDGE BLUMENFELD: How many?

MR. WASIK: Just two. One affidavit for each.

JUDGE SMITH: Let them be marked as Defendants' Exhibits A and B. We have not yet got those other affidavits marked. Start with 32. How many are there?

MR. CREANE: There were several affidavits for some of the plaintiffs. I suppose they could be 32 A and B, 33A andB.

JUDGE BLUMENFELD: Do we have to be held up while they are marked?

MR. CREANE: No, your Honor. If the Court would wish we could do that after the hearing.

JUDGE SMITH: Proceed with your argument.

MR. CREANE: One final stipulation, that the depositions which are already marked as exhibits, one of the

managers of the Bridgeport Unemployment Office and one of the Chairman of the Unemployment Compensation Commission reflecting department policy, so that they are in as exhibits, and there is a stipulation that they reflect the defendants' State policy.

JUDGE SMITH: It may be filed.

MR. CREANE: This suit seeks to establish for unemployment compensation recipients who have survived the initial eligibility determination by the defendant of the protection of the Goldberg vs. Kelly due process prior hearing.

It is our policy -- it is our position that the due process clause of the Fourteenth Amendment and the language of Section 2 of the Social Security Act require this hearing.

We are going to asking for time to file briefs after the hearing today, your Honor, and I won't take up much more time with legal argument at this point unless the Court has some questions. We apparently would need at lease three weeks on briefs. Mr. Wasik had made plans to be out of the State during the latter part of the month and we would have no objection if theCourt would grant us until June 5 to file briefs on this case. There is a great deal of data reports, depositions and other forms of material that the parties are going to have to sift through and present in the best form for the Court.

JUDGE SMITH: Do you wish to exchange briefs on the fifth of June or briefs first for the plaintiffs and then an answering brief for the defendants?

MR. CREANE: We would prefer simultaneous briefs. If anything, Mr. Wasik is more aware of what our arguments are than we are of what he may be raising in the way of defenses.

JUDGE SMITH: Exchange briefs by June 5.

MR. CREANE: I must say a word about the exhibits before the Court. I realize it is very awkward, but what we have had to do is submit individual policy memos and policy letters as exhibits because Connecticut is one of the few states that does not have a unified manual of regulations, such as was before the Court in Indiana, New York, California, where the defendant, or the state's regulations were all set out.

They are rather scattered through a number of volumes here in Connecticut so that accounts for some of the awkward mass of material before the Court on the exhibits.

We have just one witness that we are going to be calling. Mr. Hatcher.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

LARRY STEINBERG and CECIL PASKEWITZ, et al., and DELIA TRIANA and JUAN MIRANDA,

Intervenors,

vs.

15,104 Civil

JACK A. FUSARI, Commissioner of Labor, The Administrator, the Unemployment Compensation Act, State of Connecticut.

- -x

Hartford, Connecticut
May 14, 1973

B e f o r e:

Hon. J. JOSEPH SMITH, U.S.C.J.
Hon. M. JOSEPH BLUMENFELD, U.S.D.J.
Hon. JON O. NEWMAN, U.S.D.J.

Appearances:

For the Plaintiffs:

JOHN M. CREANE
412 East Main Street
Bridgeport, Connecticut

For the Defendants:

ROBERT K. KILLIAN
Attorney General
By: DONALD E. WASIK, Esq., of Counsel
Assistant Attorney General
Employment Security Div. AG-7
Labor Department
Hartford, Connecticut

THEODORE W. HATCHER, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name and address, please?

THE WITNESS: Theodore W. Hatcher. I live at 38 Bronson Street, Waterbury, Connecticut.

DIRECT EXAMINATION

BY MR. CREANE:

Q Mr. Hatcher, you are presently working for the Connecticut Department of Labor, are you not?

A Yes.

Q In what capacity?

A I'm the Unemployment Compensation Director.

Q In that capacity you have become familiar with the Connecticut laws and regulations on unemployment compensation and on the relevant provision of the Social Security Act as they affect your program here in Connecticut?

A Yes.

Q When a claimant for unemployment compensation applies in Connecticut, he is not required to demonstrate the financial need at the time he applies, is he?

A No, he is not.

Q However, you do allow a dependency allowance, do you not, for eligible claimants, $5.00 per dependent?

A Yes.

Q Does that in any sense reflect a recognition of need of claimants with larger families?

A No, because people, or a claimant, regardless of his financial status, can qualify for benefits in dependency allowances without establishing need as long as he is the whole or main support of that dependent, he may qualify for benefits.

Q I understand that, the dependency is given to everyone, but doesn't it reflect a recognition that larger families with a man or woman out of work are perhaps in more need of unemployment benefits or large amounts of benefits?

A Yes, it does.

Q Isn't it true that when the Social Security Act was enacted in 1935, including the provision on the unemployment compensation section that the -- that that expressed a congressional recognition of financial need for workers who have been laid off from work through no fault of their own and are seeking work?

A Do I have to answer yes or no?

JUDGE BLUMENFELD: Do the best you can.

JUDGE SMITH: Try.

A Unemployment compensation was initiated to provide the unemployed individual with a subsistance wage during the period that they were unemployed. In order also not to delve into their

savings or other benefits that they may have set up on their own.

Q So as to provide a short-run financial subsistance for workers who have lost their jobs?

A That's right.

JUDGE SMITH: Does the witness have any particular competence to say what was in the mind of the Congress in 1935?

MR. CREANE: I don't think he would be qualified as an expert, but he does administer the Act and he has to be familiar with -- he has to operate the agency in accordance with the Act, and I think he probably is aware of what reports and so on that came out at the time that the Social Security Act was enacted.

JUDGE SMITH: Wouldn't the reports be a little more sounder foundation for us?

MR. CREANE: Yes, they would be better evidence, your Honor.

Q Mr. Hatcher, if you can answer this, please do. If you can't, you don't have to. Isn't it true that there are substantial number of unemployment compensation recipients in Connecticut who depend solely on unemployment compensation benefits to provide for the needs for themselves and their families?

MR. WASIK: Objection. I don't think the witness

is qualified to answer that. He doesn't know from his own knowledge whether this is true or not.

MR. CREANE: I asked if he knew from his own experience and knowledge. If he doesn't, he can --

JUDGE BLUMENFELD: Was it part of his duties to find out, does he keep any records with respect to that?

MR. CREANE: I think perhaps they do keep records that have a bearing on that.

JUDGE BLUMENFELD: Do you?

THE WITNESS: No, we do not. We do not question any individual on the basis of need or ability to get along with or without the funds of unemployment compensation.

Q You have never done a study for your department to try to ascertain that?

A No.

Q After a claimant has applied for unemployment benefits and has been determined eligible, he is assigned a biweekly schedule, is he not, for reporting to the local office?

A I think I must answer this way: that the first thing that's established is entitlement and not eligibility. The individual's benefits that he establishes on filing a new claim establishes his entitlement. That's to say that this individual has a certain weekly rate and a certain durational

amount, should he be otherwise eligible.

Q I am talking about -- you are familiar with the term "seated interview", are you not?

A Yes.

Q When a claimant who has been found to be entitled or his entitlement has been established and he begins receiving benefits, when he comes into the local office and a question arises as to his eligibility or entitlement for benefits in that two-week period, he is generally referred for a seated interview, is he not?

A The initial determination, once it's established he has entitlement, generally speaking, that benefits rights interview is given to him in a seated interview.

Q I'm sorry, what was the last part of that answer?

A Benefits rights interview --

Q The benefit rights interview comes before the question arises as to his continued eligibility, does it, ordinarily?

A There has to be a monetary determination first to determine that the individual is, in fact, entitled. If he is not entitled, then there is no question of eligibility that has to be resolved prior to the --

Q This suit is not concerned with any questions arising out of that determination of entitlement or whether it's a valid

initiating claim. What I would like to focus on, when questions on a continued claim come up at a seated interview --

A Yes, questions of eligibility.

Q -- on a continued claim basis --

A Yes.

Q -- not on the initial question of eligibility and entitlement --

A Yes.

Q Now, what types of issues can get or dequalifications can result in a finding of -- that a claimant is not going to get their benefits during a particular two-week period?

A An individual -- there are quite a number. An individual may be ineligible for reasons of his separation from employment. He may also be ineligible --

Q I'm not sure we are -- we are not really talking about the same things. I'm not talking about the initial determination of eligibility. When the worker comes in and you resolve the questions whether he left work voluntarily or he was dismissed about misconduct, we are not talking about those initial determinations.

Are you familiar with the form that your department submits, No. ES-207?

A Yes.

MR. CREANE: That's one of the plaintiff's

exhibits. Perhaps, if you don't have any objection, I can refresh his recollection what we are talking about.

JUDGE BLUMENFELD: Is that termination of benefits?

MR. CREANE: Yes, your Honor. Not on the initial eligibility, but on a termination after a claimant has been determined eligible and begun receiving benefits. There are really two -- it's set out in the stipulation.

JUDGE SMITH: Aren't their cases where information comes to the Department after a finding of entitlement after benefits start which casts some doubt as to whether the entitlement was properly found, wouldn't that be included in these?

MR. CREANE: No, that's not the type of issue we are talking about. If you have the exhibits in front of you, if you would look at No. 404 BS-207, I think it breaks it down so that --

JUDGE BLUMENFELD: Is there a title on that exhibit that you have in your hand?

MR. CREANE: Non-monetary Determination Activities.

JUDGE BLUMENFELD: In short, that means what?

THE WITNESS: These are the issues that arise that may result in claimant ineligibility once adjudicated.

BY MR. CREANE:

Q In part, on the first part here, we are talking about determinations involving separation issues?

A Yes.

Q Those are the issues, are they not, that come up when a worker first goes to the unemployment office, there has to be a determination whether he left work voluntarily, whether he was dismissed for misconduct or whether he was attending school full-time and, therefore, not eligible for benefits?

A All of which can also occur on a continuing claim basis and individual may go to work for a short time and those may also be issues on a continuing claim.

Q Dismissal for misconduct?

A Yes.

Q Voluntarily leaving a job?

A That's right. An individual may go to work for an extremely short period of time, one or two days, and still be filing partial benefits in a continuing claim series, and those issues may also arise at that time.

JUDGE BLUMENFELD: You mean with respect to his second job?

THE WITNESS: Yes, to a second job.

JUDGE BLUMENFELD: You don't mean reopening the determination on the first?

THE WITNESS: No, it would not affect --

JUDGE BLUMENFELD: The finding of eligiblity?

THE WITNESS: That's right.

Q The issue that I am interested in involve determinations involving other issues.

A Yes, the work refusal, failure to apply --

Q Available for work?

A Available and able, yes.

Q This is the report for December, 1972, and apparently the bulk of the denials on continuing claim is for -- under the issue of able, available and actively seeking work?

A Yes.

Q 1339 out of 1900 denials?

A Yes.

Q For example, under pregnancy, the question of whether the claimant should be disqualified as being too pregnant?

A Yes.

Q 267 on disqualifying or deductibility income?

A Yes.

Q 213 on refusal, suitable work?

A Correct.

Q And 38 miscellaneous?

A That's right.

JUDGE SMITH: Which one is that? That's not the

first page, Exhibit 4.

MR. CREANE: It has a report period, your Honor. This one is 12/31/72. They should be arranged chronologically. What's the top one in your exhibit?

JUDGE SMITH: This is 2/13/73.

MR. CREANE: It would be back about two reports earlier than that. Any report would give you an idea of the distinction between the initial eligibility questions and the continuing eligibility questions.

Q Now, on the question of determination after a seated interview, isn't it normal procedure that the claimant will come in, get into the claims line, submit two signed cards, UC-46 and UC-46, in which he lists the efforts he has made to obtain work during the two-week period, and signed a card stating that he has not had other employment, that he has not been collecting any other unemployment benefits and present those in the claims line?

A Yes.

Q Now, if a question arises in the mind of the person giving out the checks as to possible ineligibility, he would be ordinarily referred to the seated interview line?

A That's correct.

Q When he gets to the head of the seated interview line, he will sit down with what the Department calls a fact finder,

isn't that correct?

A That's correct.

Q For what they term a seated interview?

A Yes.

Q Now, at the seated interview there is a determination made as to whether the claimant is eligible for that two-week period or whether he should be disqualified for that two-week period, isn't that correct?

A Yes.

Q Isn't it true that at the seated interviews, which is really the heart of this case, that the fact finder in reaching a decision under some circumstances will rely on third party information, which is given either over the phone or in writing, and not directly there at the seated interview?

A In some cases, yes.

Q Isn't it true that at the seated interviews there are contested factual issues which the claims examiner must sort out and make a decision on?

A That he must resolve, yes.

Q Isn't it true that at the seated interviews it very often involves the application of a very broad, in fact, vague standard, such as available for work, reasonable efforts to make work, job that was suitable as defined in the statute, whether the job offered involved a place that was a reasonable distance

from his home, isn't the fact finder very often asked to apply those particular standards to the facts of the case before him?

A I must qualify part of my answer because you refer to vague statute.

Q I call it broad. I will withdrawn the term "vague".

A Broad. They have to apply broad standards, yes.

Q Isn't it true --

JUDGE NEWMAN: Is the interview you are talking about with respect to the next two weeks or the last two weeks, or is it in the middle, when does it happen with reference --

THE WITNESS: The individual, when he files a claim with benefits, a continuing claim for benefits, files for a period that ends the Saturday before the week in which he is appearing. He is at that time certifying to his availability and eligibility for that two-week period immediately preceding, and these are the claims that are at issue at this interview.

JUDGE BLUMENFELD: Immediately preceding?

THE WITNESS: Yes.

JUDGE BLUMENFELD: You mean that have already passed?

THE WITNESS: That have already passed.

JUDGE SMITH: He doesn't get paid until after the two-week period until after he has had the interview following the end of the two-week period?

THE WITNESS: Yes. He is certifying to his eligibility for the benefit period or the claim period which ends the Saturday before he comes in. At that time he is certifying that he has been available for work and he has applied for work.

JUDGE BLUMENFELD: During the past two weeks?

THE WITNESS: During the past two weeks.

JUDGE BLUMENFELD: He goes on Monday and says, "I want my benefits for the past two weeks"?

THE WITNESS:

JUDGE NEWMAN: If they don't question it, he gets paid that day?

THE WITNESS: That's right.

JUDGE NEWMAN: If they question it, then he has this -- what's been called a seated interview?

THE WITNESS: Which would occur that same day, and if otherwise eligible, would be paid, but if denied, no.

JUDGE NEWMAN: Would the issue get resolved at least at that level that day?

THE WITNESS: Generally speaking. There are cases

in which there is a limited delay, but generally, there is a finding on the day in question.

MR. CREANE: Your Honor, the stipulation states that in some circumstances a fact finding is made, and then the decision is mailed out under the signature of the office manager in a form letter at a later point.

BY MR. CREANE:

Q Ordinarily, you said whatever develops at the seated interview is for the past two-week period?

A Yes.

Q Isn't it true that there is at least one circumstance where a decision is made on the day of the claimant is scheduled to come in that will affect his benefits for the coming two weeks and not for the past two weeks? I'm referring to what is our Exhibit 29, evidences of temporary unavailability. Are you familiar with that?

A There is no determination made at that time, at the time of the interview. The individual is interviewed on the issue that is occurring on that day.

Q Isn't it stated here that if the fact finder determines that the man has been drinking, that determination will be made that he was not available for that week?

A For that particular week, not the weeks coming. This

is the week in which --

Q It says since the observed condition does not relate to the work for which the claimant is filing his claim, the fact finding report should be held until the claimant files his claim for the week in which he appeared in the local office because there is some time lag. You come in on a Tuesday from the preceding two-week period?

A Yes.

Q That Tuesday of that week you already knew the first week of your next two-week period?

A That's correct.

Q So that if the fact finder observes a man and feels that he is under the influence of alcohol, he will disqualify him, make a note, and disqualify him for that week the next time he comes in?

A Yes, but he is being interviewed at that time on the issue.

Q Of whether he is under the influence of alcohol?

A That's right.

JUDGE BLUMENFELD: What does he do? Does he say, "Forget it, you behaved yourself the last two weeks, but for this week you are in trouble because you are drunk"?

THE WITNESS: The issue of availability -- an

individual must be found to be available for work throughout the week for which he is receiving benefits, and since this issue of inebriation occurs during the current week and not for any week for which he is being paid benefits today, then it does not become an issue until the individual actually files a claim for the current week.

JUDGE NEWMAN: When he files that claim is some notation made as to what the facts were when he came in before?

THE WITNESS: Yes. It is necessary to interview him at the time he is in in order to obtain the facts on this particular week.

JUDGE NEWMAN: Are you saying that as to those issues that are observable when a claimant comes in the seated interview serves two purposes?

THE WITNESS: Yes.

JUDGE NEWMAN: It determines past eligibility, eligibility for the preceding two weeks?

THE WITNESS: That's correct.

JUDGE NEWMAN: And it serves as a factual basis for the determination that will later be made as to the two-week period in which the interview is held?

THE WITNESS: I can't say the two-week period, but

the current week. The past two weeks and the current week because we cannot project into the future.

JUDGE BLUMENFELD: Do you carry it back into the past? He is in there on the 15th, let's say the 17th of the month, a Monday, and he is looking for his benefits for the two first weeks of the month, and he is in an intoxiciated condition, and now you say that you take that into account in determining whether he was going to get benefits for the first two weeks?

THE WITNESS: No.

JUDGE BLUMENFELD: That's out?

THE WITNESS: Yes.

JUDGE BLUMENFELD: He is in to collect for those?

THE WITNESS: That's correct.

JUDGE BLUMENFELD: But while he is in there, you notice he is in no shape to go to work that day?

THE WITNESS: That's right, that week.

JUDGE BLUMENFELD: So you cross that week off, he is not entitled to benefits for that week, is that right?

THE WITNESS: If it's found that he is in a condition such that he cannot be referred to a job potential that day.

JUDGE BLUMENFELD: So he loses his benefits

for that week?

THE WITNESS: Yes.

BY MR. CREANE:

Q Do you have your fact finders -- do they receive any particular training in recognizing the difference between a man who is drunk or a man who might be having a mild seizure or been taking pills under doctor's orders or taking sedatives who would give the appearance --

A This is the purpose of the interview. If the individual has a medical problem and he presents the medical problem and we are able to substantiate it with a medical statement, then the man has no problem in that area.

Q I think you stated that very often the fact finder will have to make a judgment as to whether they think the person is lying or telling the truth, isn't that right?

A Well, there are times where we must resolve the facts we are unable to confirm.

Q Aren't they told that in the comments section of the fact finding report when they write up the fact finding report that they are specifically told to put in that section any nonfactual factors that went into their decision, even though they are not part of the factual record, such as, "I didn't believe the person was telling the truth, or he twitched when I asked him the question," aren't they told to put those kind

of comments in?

A The type of comment that they have to put in there is a justification for having arrived at their decision. There is an occasional period where an individual has established a record such that there is a question on the validity of his statement and this may be evaluated along with the other factors in arriving at a decision.

Q So the fact finding report would have the factual basis for the decision, and then a comment section for any nonfactual matters that went into arriving at his decision?

A It may not have any nonfactual information. It could have some nonfactual.

Q If a claimant is required to register with the employment service -- is he not, as a condition of receiving benefits?

A Yes.

Q And on occasion a job will be -- he will be given a job referral to go for an interview?

A Yes.

Q Now, the employer is given a card that he is to check off if the person shows up to inform the unemployment department of whether or not the person showed up, whether the job was offered, whether it was refused, whether it was not offered because a claimant didn't appear to be interested in the job?

A Yes. The individual hand carries the card and presents it to the employer and the employer makes his comments on the part of the card that's designated for that purpose.

Q Doesn't he generally mail it back?

A He mails it back, yes.

Q Now, suppose a card comes back and it's checked out and, "I have jobs, but I didn't offer one to this claimaint because I didn't think he was interested or he told me he had a problem with transportation," and the man -- and that man comes in for -- to pick up his checks and they refer him over for a seated interview, and isn't it true that the fact finding examiner can give any amount of weight he wants to that unverified report from the third party in making his decision a the seated interview, he might try to call the employer to verify it, isn't that correct?

A Yes, he may.

Q But he may not be able to get hold of the employer?

A Well, any -- there is a policy throughout the Department that on the fact that cannot be established, the claimant is given the benefit of the doubt, so I don't think that the program is weighted towards more -- more heavily towards the employer statement, if we cannot verify it.

Q Is that in writing anywhere, or is that sort of an unwritten policy?

A It's an unwritten policy.

Q But the fact finder is free to rely on third party information in arriving at his decision?

A If the third party is a party at interest, yes.

Q Suppose there is a report that a claimant was wo: .ing --

JUDGE NEWMAN: What does that mean? You mean if the issue is the circumstances under which he left employment so that it affected that employer's --

THE WITNESS: No, I'm referring to the employer where an individual was referred and the employer either offered a job and the individual refused, or the employer did not offer a job for particular reasons and the employer had a potential job for the individual.

JUDGE BLUMENFELD: That is, a prospective employer?

THE WITNESS: Yes.

JUDGE NEWMAN: That's what you mean by a party in interest?

THE WITNESS: Yes.

JUDGE NEWMAN: Inthat event, you say they don't rely on the written statement?

THE WITNESS: Not alone, not alone. It has -- the individual has to be interviewed on the job for refusal. He cannot be denied on the job if he

refuses.

JUDGE BLUMENFELD: Just on the basis of the card from the proposed employer?

THE WITNESS: That's correct, he cannot, he must be interviewed.

JUDGE NEWMAN: Supposing he disputes what's on the card?

THE WITNESS: Then we attempt to reconcile the differences between the statements. Where there is a question of doubt, unconfirmed doubt, we weigh it in favor of the claimant. We cannot deprive him on the basis of a figment of our imagination.

MR. NEWMAN: Supposing it's a factual dispute, the cards says the employer reports he offered him a job, and the claimant says, "I have no transportation for the time period that he offered me that particular shift"?

THE WITNESS: And if the individual confirms this --

JUDGE NEWMAN: Which individual?

THE WITNESS: The claimant.

JUDGE NEWMAN: That's what the claimant says, he says, "I have no transportation"?

THE WITNESS: So there is no conflict, then, in that particular case. The employer offered him a job,

he said he couldn't accept it because he had no transportation, so there is actually no conflict, he has failed to accept the job.

Now, we must determine whether such reason for refusal was with or without -- whether he refused suitable work without sufficient job -- without sufficient cause, I'm sorry.

JUDGE BLUMENFELD: What about it, do you then look into the question of whether he had transportation?

THE WITNESS: Yes, we do look into that. This is all part of the report.

JUDGE NEWMAN: Supposing it's an absolute conflict, the claimant says, "He never offered me a job"?

THE WITNESS: This type of case you have to dig a little more deeply to find out where the weight of evidence lies in order to make a determination. If the employer -- you could contact the employer and say that this individual says he appeared there, you didn't offer him a job. The employer -- you take additional testimony from the testimony -- you take additional testimony from the employer, and if there is still a conflict and we are unable to reconcile it, we would have to reconcile it in favor of the claimant, but

generally speaking, it doesn't reach the point where the individual or the employer does not eventually agree that something has happened there at that time.

JUDGE BLUMENFELD: There can be misunderstanding?

THE WITNESS: Yes.

JUDGE BLUMENFELD: But rarely a case of direct conflict so that you have to make a judgment of credibility?

THE WITNESS: That's right.

BY MR. CREANE:

Q Aren't there often direct conflicts of version of facts at the hearings before the unemployment commissioners, where the claimant says one thing and Department says: no, it's different?

A Yes, there are.

Q Aren't those merely continuations of the conflicts that arose at the unemployment office and were resolved against the claimant?

A Not always. Sometimes the original statement of the claimant is substantially different from those that appear at the hearings.

Q If the claimant in the situation involving a job referral, if the employer is not there, the fact finder is still empowered to go ahead and make a determination, if he is unable

to contact a third party for additional confirmation, isn't he?

A Not without exhausting all avenues open for obtaining the information from the employer.

Q The employer sends back a card and says, "I offered him a job and he refused," and the claimant says, "He never offered it to me," the fact finder tries to get hold of the employer and is unable to do so, the fact finder is then -- he has to make a decision?

A He has to make a decision. If the employer is unreachable, he has to make a decision on the basis of the facts that's available to him.

Q Suppose he thinks the claimant is lying, he is free to take that into consideration in arriving at his decision?

A He could take that into consideration.

Q This same type of problem would come up on the question of availability and reasonable effort to find work, wouldn't it, where an employer contacted the Department and said, "Look, this guy has been collecting benefits and I had a job waiting for him two months after he left and he never came back to apply for it," wouldn't that involve again the question of third party information of why didn't the man go back and apply, what were the circumstances when he left, was there too much bitterness between them, is that an excusable reasonfor not going back? Doesn't that again involve third party information coming to the

Department?

A Yes.

Q And decisions being made partly on the basis of third party information of persons who were not present at the seated interview?

A Yes.

Q Isn't it true that if the Department receives a report that a claimant has been out working, moonlighting, and hasn't reported that income on his UC-46 form, that he has disqualifying income, isn't it true that the Department, if they consider it a reliable source of information, can use that third party information as a basis for disqualifying the claimant at a seated interview?

A Not as a basis for disqualifying until it was established that he actually had the income. The employer involved, or if there is an employer involved, would have to establish that the individual actually had earnings before there would be a denial of benefits.

Q Are there any other major reasons for disqualifying a claimant on the basis of a seated interview that would not involve the various degrees, factual issues or relying on third party information, not in every single instance, but are there any major categories that you can think of that where you can say that never involves third party information categorically

A. No, except where -- I'm sorry -- except where the individual is unable to work and so states that he is unable to work.

Q. A major reason for disqualifying claimants is on the basis they have not used reasonable effort to seek work, isn't that correct?

A. Yes.

Q. That's one of the big reasons. Isn't that determination by the fact finder at the seated interview, doesn't he have to take into account many, many factors in arriving at an individual decision for that claimant?

A. Yes, he does.

Q. Could you give a few of the factors they would have to make in order to make that kind of decision?

A. Well, the condition of the labor market, the individual's job classification, the claimant's exposure up to this time to the job market, if the individual has already exhausted the job potentials in the area, all of this has to be taken into consideration.

Q. Wouldn't such factors as whether he had a car, whether he had full access to a car, how far the jobs that he could do were from his home?

A. That's right.

Q. So there is really almost an infinite number of

factors that could be relevant to the question of whether a particular claimant had made a reasonable effort to seek work, reasonable for him?

A Yes.

Q Isn't it true that the Department's regulations recognize that, that they recognize it's basically a judgment in each individual case as to whether the person made a reasonable effort?

A Yes.

Q Isn't that a preeminently factual issue, reasonable effort, in any particular situation or whether a particular claimant has made a reasonable effort?

A There is a judgment that must be made.

Q Do you have a working definition of what the statutory requirement of reasonable effort means that you could supply us with?

A A statutory?

Q There is a statutory -- that the claimant make reasonable effort in order to get benefits.

A That the individual do what can be reasonably expected of him to try to find work if he is truly attached to the labor market ready and available for work.

Q You mentioned one of the factors would be the labor market itself. What is the degree of unemployment, whether

there is many jobs available? Do you know if the fact finders are supplied with that information on what the condition of the labor market is?

A The fact finders are aware of the condition of their labor market area through constant exposure to their particular area, they know when employment in their area is heavy, they have available to them from the employment service records the hiring in certain job classifications.

Q Are you sure that's actually followed through, or is that just what you wish policy was?

A No, I'm sure.

Q It's carried through?

A Yes.

Q I ask that because --

JUDGE BLUMENFELD: Is this a hostile witness for you?

MR. CREANE: I'm sorry.

JUDGE BLUMENFELD: Is Mr. Hatcher here a hostile witness, do you regard him as a hostile witness?

MR. CREANE: Not at this point, your Honor.

JUDGE BLUMENFELD: This testimony, does this illustrate what the regulations provide, or is this something we wouldn't have known otherwise? Do we have to have this testimony as to every little step that's

taken there and how it's done?

MR. CREANE: Yes. We have no agreement, your Honor, on -- the State's position has been up to this point the claimant supplies the information and the only reason he is disqualified is because of information that he supplies. You mean the overall testimony of Mr. Hatcher?

JUDGE BLUMENFELD: Yes. Couldn't this have been taken on deposition and reduced to writing so that we could have had it?

MR. CREANE: I suppose it could have been doneby deposition.

JUDGE BLUMENFELD: Up to now he is not a hostile witness and we don't have to be too critical of matters of credibility, is that right?

MR. CREANE: Yes, that's right.

BY MR. CREANE:

Q The claimants supply another form, UC-45, where they list the places that they have sought work?

A Yes.

Q Is there any statewide policy on the number of places that must be listed on that form?

A There is no policy because you have to establish -- as far as eligibility is concerned, we do have a policy for

submitting or screening in order to establish which ones should be interviewed in order to determine whether or not such effort was reasonable, and that is three places a week. If the individual applies at fewer than three, then, they must be interviewed to determine the quality of the effort that they have made.

Q Has that ever been reduced to writing, that there must be at least three, and if there are two, you have to have a seated interview, is that a policy memorandum?

A It's not written that the individuals who are involved are aware of that.

Q You tell them by phone?

A Well, through our training sessions, through our exposures to the adjudication section, through our management meetings that the managers are responsible for the operation of their office.

Q Do you know if --

JUDGE NEWMAN: At least three or less than three, which is the critical point?

THE WITNESS: If they have three, they are screened through, except for a periodic reinterview that's scheduled for each individual.

JUDGE NEWMAN: I don't know what you mean, screened through?

THE WITNESS: The individual who takes the claim has to be faced with making a judgment as to which ones should be referred for further interview and which should not.

JUDGE NEWMAN: If he sees there were three places --

THE WITNESS: Then he has no problem for screening that individual.

JUDGE BLUMENFELD: You mean clearing him for receipt of benefits?

THE WITNESS: Receipt of benefits.

JUDGE NEWMAN: Does he, in fact, pay him?

THE WITNESS: Pay him benefits.

JUDGE NEWMAN: So long as there is three?

THE WITNESS: Unless there is a regular scheduled periodic interview. We schedule interviews to cover the entire question of availability periodically.

JUDGE NEWMAN: How often does that happen?

THE WITNESS: It varies upon individuals, the attachment to the labor market and other factors that are involved there.

JUDGE BLUMENFELD: When do you set up that schedule?

THE WITNESS: We set up that schedule on thefirst interview, yes.

JUDGE NEWMAN: Is the claimant ever told that three is the magic number?

THE WITNESS: Yes.

JUDGE NEWMAN: When does he find that out?

THE WITNESS: He is told that on his benefit rights interview. He is told that when he is handed the work effort form.

JUDGE NEWMAN: Does that have to be on three different days?

THE WITNESS: Not necessarily.

JUDGE NEWMAN: When you say "not necessarily", if all three are on the same day, does it count?

THE WITNESS: It may raise a question, but if there are three this week on the same day and next week three on separate days, then it doesn't create a problem, but if all of the effort in each week is confined to a single day, then it raises a question as to whether the individual is doing all that he can be reasonable expected of him.

JUDGE NEWMAN: When you say he is told at the beginning what the ground rules are, you say he is told if he sees three a week, that's sufficient, is that correct?

THE WITNESS: That's sufficient as long as there

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is no other issues.

JUDGE NEWMAN: On this issue of availability for work?

THE WITNESS: Yes.

JUDGE NEWMAN: Of seeking work?

THE WITNESS: Yes.

JUDGE NEWMAN: He is told that three a week is enough?

THE WITNESS: Yes.

JUDGE NEWMAN: Is he also told that if all three show up on the same day, that that is going to raise a question?

THE WITNESS: I won't guarantee that's done.

JUDGE NEWMAN: In this case there is an affidavit from someone who was disqualified because their appearances all showed up on the same day, and they had a reason, they said that's the only day they could get out to make family arrangements to go out and look for a job.

THE WITNESS: If the individual consistently is making themselves -- or entering the effort -- field one day a week, then there is a question in my mind as to whether or not this individual is fully attached to the labor market and,therefore, the question

must be raised and a determination made from the facts obtained on such hearing.

JUDGE NEWMAN: But the claimant doesn't know to begin with that putting down three appearances on day is going to raise the question, is that right?

THE WITNESS: That's right.

JUDGE NEWMAN: He doesn't know that?

THE WITNESS: Yes.

JUDGE NEWMAN: When he goes for his two-week benefit, he doesn't know he is going to have to meet the claim that he hasn't made a good enough effort for all three --

THE WITNESS: He wouldn't be denied on the initial situation.

JUDGE NEWMAN: He wouldn't?

THE WITNESS: Not generally, no.

JUDGE BLUMENFELD: How many times do you have to catch him trying to cover three bases the same day?

THE WITNESS: Well, we have to consider reasonableness with the claimant, and if he is not aware that he has caused himself harm, we must warn him about his efforts so that --

JUDGE BLUMENFELD: You do throw it up to him at some stage, "Look at it, you're only out one day a week,"

is that right?

THE WITNESS: Yes.

JUDGE BLUMENFELD: You do that before you throw him out?

THE WITNESS: Yes.

BY MR. CREANE:

Q That's not written policy, that's something that's supposed to be understood by all fact finders in the State?

A Yes.

Q And the claimants, you stated they were told that as long as they had three places listed, it would be all right. Was that anywhere in writing, was that ever given to the claimants in writing?

A No, we don't have that in writing to them.

Q They were given other written instructions on telling them, explaining the form that employers were not required to sign it?

A No, the employers are not required to sign it.

Q Now, it's explained in writing to the claimants?

A The form says that the employers are not required to sign it.

Q But certainly things are put in writing, but they weren't told that three places would get them their checks, that wasn't put in writing?

A No.

Q It's not in writing in any policy that three checks -- three places are enough to get you checks?

A That's right.

JUDGE BLUMENFELD: Do we have anywhere what you have given us, any statistics as to how many are terminated for not making themselves sufficiently available?

MR. CREANE: Yes, your Honor.

JUDGE BLUMENFELD: And what percentage that is of those who were terminated?

MR. CREANE: Yes, your Honor, it's not broken down by -- two of the categories are lumped together, availability and reasonable effort to make work. That's in our Exhibit No. 4. That one that Judge Smith had out at the beginning of the testimony.

JUDGE BLUMENFELD: These figures are over a period of how long?

MR. CREANE: It goes back a year and a half. We have monthly reports.

JUDGE BLUMENFELD: Are we talking about a substantial period here?

MR. CREANE: In 1972, out of 1900 terminations involving situation we are trying to get a hearing for, 1339 were for available and actively seeking work.

1,339 out of 1901.

JUDGE BLUMENFELD: Were terminated because they did not make themselves available?

MR. CREANE: Were not available and reasonable effort to make work. About 213 were on the referral, refusal of a job, where that involved -- that could involve a situation where an employer sent in a card and he says, "I didn't want it," but the bulk are available and reasonable efforts to find work.

MR. WASIK: If I may interject at this point, I was going to raise this point when it was my turn so it won't get lost, as counsel has stated, that category of able and available and reasonable efforts, there are two separate categories that are lumped together, and the Court should be aware of the fact that able and available will include denials or disqualifications for benefits at the initial stage, as well as interruptions where people have already been collecting so that we don't know exactly how many are denied after they have already been collected -- collected and,therefore, as I say, I was going to point out in the stipulation that we signed, this figure of 60 to 70% is not accurate and I will allude to that later at my turn.

JUDGE SMITH: We will take a short recess.

(Recess taken.)

MR. CREANE: Your Honor, you asked earlier if I considered the witness a hostile witness, and while I don't consider him hostile, because of some questions that have come up during the latter part of the questioning, I don't feel bound to accept every answer that he has given because --

JUDGE BLUMENFELD: I understand.

BY MR. CREANE:

Q Mr. Hatcher, what is the average length of time that an unemployment compensation recipient receives benefits during a particular claim series in Connecticut?

A During 1972 it was 15.2 weeks.

Q 15.2 weeks?

A Yes.

Q On an exhibit, Exhibit 31 that we have introduced in this case, shows that 90% -- in 90% of appeals to the unemployment commissioner more than 100 days passes between the time the person applies for a hearing and the date he is given a written decision by the Commissioner, and then about 30% of the cases it's a delay of more than 150 days.

Now, does that tie together your fact on the average length of -- that he collects benefits with the long

delays on the appeal procesures in Connecticut, wouldn't that mean in many cases that a worker has already gone back to work by the time he gets the decision reversed and gets his benefits?

A It's a difficult question to answer yes or no.

Q Is there any factor other than applying the two figures together to arrive --

A There is an issue. Some of the disqualifications are statutory disqualifications for the week of and the four following weeks, some are disqualifications that last only one or two weeks, therefore, the individual has been receiving benefits beyond the period involved prior to his hearing, prior to going back to work.

Q But if the average period of time in which he draws benefits during a claimed series is 15 weeks, and the average period of time waiting an appeal says is 20 weeks, then, in many cases, the man will already have returned to work by the time he gets a decision?

A Yes.

MR. WASIK: Will theCourt note a continuing objection to this line of questioning in view of my earlier objection, which was overruled, as to this information coming in?

JUDGE SMITH: Yes.

Q Do you have any figures, Mr. Hatcher, on the number of

times that a claimant will come back to initiate a new claimed series during a particular week, is it frequent that a worker will be unemployed, collect benefits, come back to work and come back for the same year to file another claim?

A Yes, there is a substantial number or substantial percentage of our claimants who get involved. I do not have the statistics on that.

JUDGE BLUMENFELD: Repeaters?

THE WITNESS: What they are are people who have been unemployed for short periods of time who may go to work for a short period of time and reopen their claim during a benefit year, during the existing benefit year.

Q If during the first claim during a claim year there is an overpayment involved for some reason the claimant was given benefits, say, he was given benefits pending the hearing, is the Department free to offset any overpayment against a later claim that he makes with the Department?

A Yes. We are required to offset overpayments that have been established as overpayments before paying additional benefits.

Q The Department is also free, isn't it, under the statute, to seek reimbursement for any overpayment by whatever legal method is necessary, including civil lawsuit?

A Yes.

Q And do you think there is some distinction between the case with welfare where most of the claimants are judgment-proof and unemployment where very often the worker has a job and has some assets, when the Department seeks repayment for an overpayment?

A Is he judgment-proof, are you asking?

Q Could you give us the figures on the percentage that the Department recaptures when an overpayment is involved?

A During the period from January of 1972 to March of 1973, the total amount overpaid from benefits were $1,830,178, the amount recovered of that amount was $916,093.

Q So that's about a 50% recovery rate?

A Yes.

Q Are those for comparable periods, do you have an overpayment in the period, but aren't the repayments for possibly earlier overpayments?

A There could be some earlier overpayments involved.

Q It doesn't necessarily mean that all of that 1.8 million has been written off?

A No.

Q That the Department has given up attempting to recover?

A No, it doesn't.

Q So if the man comes back in on a later claim, they can offset --

A Offset against further benefits, that's right.

MR. CREANE: I have no further questions at this time.

CROSS EXAMINATION

BY MR. WASIK:

Q To go back to a few of the subjects mentioned in direct examination, Mr. Hatcher, first, let's establish, is eligibility established on a week-by-week basis or biweekly?

A On a week-by-week basis.

Q But they come in biweekly?

A Yes.

Q It's possible for a man to be eligible one week and ineligible the second week?

A That's correct.

Q I believe earlier you stated that the benefit of the doubt was given to the claimant and there was nothing in writing on that particular point. Do you wish to change that testimony?

A Yes, I do. It is now legislated that the claimant be given the benefit of the doubt.

Q This is in our statutes now?

A In the statutes, yes.

Q Now, in the situation where a man comes in who is obviously under the influence of liquor or drugs, I believe you stated that if he met the requirements of the Act, he was paid

for the prior two weeks, but that it would be noted in his record that on that particular day he was unavailable, is that correct?

A Correct.

Q Would there be occasion or reason or is it done, I should say, under such circumstances, to withhold payment of the check on that day?

A There are situations where we would withhold payment of that check merely to protect the individual. If the individual appeared not to be in condition such that he could handle the disbursement of money, we would have him report back to us the following day in order to pay him for the prior two-week period.

Q If he were sober or no longer under the influence of drugs, would he be paid?

A He would be paid, yes.

Q Would that fact also be noted that he was in sober condition in the records so that when he came back for his next regularly scheduled interview, if he presents evidence that he was otherwise able and available for work and made sufficient efforts to find work, would he be denied benefits for that first week?

A No, he would not, as long as he established that he was available for work throughout the major portion of the week.

Q So even though that one day he may not have been able, if he satisfies the interviewer that the majority of the week that

he was, he would be paid?

A That's right.

Q Where there is information from a prospective employer that a claimant either failed to show up at an appointed time to apply for a job, or actually refused a job, this prospective employer is contacted, either by telephone or by being contacted by himself, is that correct, in other words -- I wasn't phrasing that very well.

The contact that you have with the prospective employer is either by telephone or from some communication from him, is that correct?

A Yes, that's right.

Q He is not required to be present at the hearing?

A No, he is not.

Q These prospective employers are registered with the employment service office, is that correct?

A Yes.

Q As a prospective employer, is he an interested party in the hearing?

A He could be an interested party.

JUDGE BLUMENFELD: Not simply because he is a prospective employer, there would have to be some other reason?

Q Isn't it true --

A Well, he could be the prior employer who could apply for a merit rating credit on the charge that has been against him

Q In most cases, if you can state, is such a prospective employer an interested party?

A Where there is a credit, yes, but not where there is no credit.

Q What would happen to the efficiency of the employment service bureau if these prospective employers were required to come to such a hearing, in your opinion?

MR. CREANE: Objection. I don't know if he is in a position to give testimony of what would happen to the employment service.

Q Have you had experience with the employment service, Mr. Hatcher?

A I have worked in field offices in close proximity to the employment service as -- in all capacities up through manager of the Unemployment Compensation office in the field.

MR. WASIK: I submit Mr. Hatcher is qualified to answer that question.

THE COURT: Overruled. You may answer.

A If the individuals failed to accept job offers and there was a continuance of payment of benefits, it is possible that the employers themselves may become dissatisfied and withhold the job openings from the employment service and fill them

through their own means.

Q. Have there been complaints that you are aware of of prospective employers of being bothered by the apparent lack of interest by claimants in the proposed jobs?

A. Yes. It's been historical that the employers have with whom I had a good relations were concerned about the lack of interest on the part of some claimants in accepting job referrals.

JUDGE NEWMAN: I'm not sure I understand you. Is it your point that if an employer had tocome to a hearing to say that he offered a job, that the result of that might be that he, in fact, wouldn't offer the job in the first place?

THE WITNESS: No. What I'm saying, that where the -- where we fail to take the action that was proper in the case of a job refusal, that the employer may become so dissatisfied with our service that he would not seek the service of the public employment security division.

JUDGE BLUMENFELD: He would resent the fact that you didn't give credit to his statement that the job had been refused, right?

THE WITNESS: Yes.

JUDGE BLUMENFELD: And then would turn elsewhere?

THE WITNESS: Yes.

Q What effect would this have on the employment service bureau itself, in your opinion?

A The employment service division of the employment security division depends largely on their placements in order to establish their budget and to keep in operation.

Q You stated that claimants were told searching for work three times a week was what was required. Can you say whether or not this was stated or is stated as policy that they must go to three places, or as a general rule of thumb this is something they must do?

A This is stated as a rule of thumb, however, no one is denied on a failure to make three efforts in a week until the quality of the effort has been reviewed. The number of places that they apply is not the controlling factor. The number of places they apply is helpful for the line examiner in screening which ones need an interview, but the final determination is made upon the quality of effort, rather than the quantity.

Q Now, counsel asked you in reference to ES Form 207 for the month ending December 31, 1972, how many persons were denied on the basis of able and available and actively seeking work, and I believe the total was 1339 out of 1901 denials?

A Yes.

Q The 1900 denials is one figure, but how many decisions

were made, how many claimants in all were made, or were interviewed in culling out this 1339 denials?

A. This figures represented close to 80,000 persons, or approximately 300,000 weeks claimed.

JUDGE BLUMENFELD: How many?

THE WITNESS: About 80,000 claimants. You see, the claims are filed by individuals. Of the number that were denied, that denial figure was 1900, and it's a very small percentage of the total claim load.

JUDGE BLUMENFELD: Out of 80,000?

THE WITNESS: Yes.

JUDGE SMITH: Two and a half percent.

THE WITNESS: Close, yes.

MR. WASIK: I have no further questions on cross examination. I don't know if counsel has any further redirect. I did have a few other questions that I wanted to ask Mr. Hatcher on direct examination.

MR. CREANE: You may go ahead. I have one, but I will save it until the end.

MR. WASIK: I shall want to introduce further exhibits through Mr. Hatcher. I believe the Clerk has them already. Exhibit C, which is a booklet: the rights and responsibilities booklet.

THE WITNESS: Yes, that's the name.

BY MR. WASIK:

Q Is this given to each claimant who files for unemployment compensation benefits?

A These are given to each claimant who files a new claim for unemployment benefits. They are also made available on the continued claim line for those who may havelost or destroyed their copy, and they can pick them up at any time that they would want them.

MR. WASIK: Also, at this time I would introduce at this time Defendants' Exhibit E, which I believe was filed at a prior hearing. Counsel has copies. It's concerning the procedures to be followed in implementing the job and decision requirements, there is no objection to that being entered.

And the last exhibit, Exhibit D, is an interoffice letter dated April 2, 1973, sent from the Adjudication Center of the Unemployment Compensation Department to all employment security division managers and field supervisors. I believe counsel has a comment to make upon that.

MR. CREANE: I'm not sure for what purpose it's being introduced.

MR. WASIK: It's being introduced to show what policy is in regard to procedure to be followed

where the claims examiner has received information from an employment service representative stating that a claimant has refused to accept a referral to a prospective job and the procedure spells out that the employment service representative is to be present at the hearing when the claimant comes in.

MR. CREANE: For that purpose, I have no objection.

JUDGE NEWMAN: It may be marked.

(Document received in evidence.)

MR. WASIK: I would also ask the Court to look at the stipulation to facts signed by both counsel on Page 7. In Paragraph 14, this is what I alluded to earlier, is the reference that the denials for able and available and actively seeking work constituted 60 to 70%, and I would just ask the Court to mark that in such a way that -- I am not stipulating to that fact, but subsequent to sending that to the Court I learned that this figure included denials which were made at the initial determination of a person's eligibility, thus, that figure is, in my estimation, not correct.

JUDGE BLUMENFELD: It includes initial denials?

MR. WASIK: Yes.

JUDGE BLUMENFELD: Could you separate them out?

MR. WASIK: There is no way, no. The statistics are such that they are lumped together. I don't know why, but they are.

JUDGE NEWMAN: By denial you mean lack of entitlement?

MR. WASIK: No. A person can be entitled, but he may say that, "I am only going to accept work on the first shift, or I will only work for anybody within 15 miles from my home, some type of restriction.

JUDGE NEWMAN: That would bear on his availability for work?

MR. WASIK: Yes, but it would be initial determination and not at -- after he has been determined eligible and started to receive benefits, we are concerned with an interpretation of benefits and what type of hearing the person gets then. These denials come right at the beginning when they say, "Well, I'm sorry, you are not available and, therefore, you are not eligible." So a man didn't get to receive benefits until he cures that defect.

JUDGE BLUMENFELD: That attacks the standard rather than the degree of compliance with it, whatever it is.

MR. CREANE: I don't think there is a significant difference between the two categories.

JUDGE BLUMENFELD: I can see a difference.

JUDGE NEWMAN: Is it part of your lawsuit, that type of denial?

MR. CREANE: No, it's not.

MR. WASIK: It is significant to me to say that this type of denial constitutes 60 to 70% when it doesn't. It's much less, if you consider that the number comprising this so-called 60 to 70% concerns initial denials and not denials that interrupt payments.

JUDGE NEWMAN: Do you have any basis for estimating what portion of all the denials that the plaintiffs are talking about are the ones you are talking about?

JUDGE SMITH: Perhaps the witness can.

THE WITNESS: It's very difficult for me to estimate, however, I can say it includes cases where people are ill and come in seeking benefits and not meeting the eligibility requirements. They may have injuries and other things that do not qualify them under the benefit. They are a small percentage, I would say, of the total number of cases, but I can't give you an estimate.

JUDGE BLUMENFELD: That they are not able?

THE WITNESS: They are not able.

JUDGE BLUMENFELD: And don't qualify?

THE WITNESS: Yes.

JUDGE BLUMENFELD: What about the other class where they have certain standards of their own as to where they are going to work and what kind of work they are going to do?

THE WITNESS: This is also a small percentage.

JUDGE BLUMENFELD: Of the group that are not getting --

THE WITNESS: Yes.

JUDGE BLUMENFELD: I don't know what a small percentage is.

THE WITNESS: I don't want to give an estimate without some fact behind it.

BY MR. WASIK:

Q Can you give us an approximation of how many claims were filed weekly at the peak of the economic situation in the last two years or so?

A Approximately --

JUDGE BLUMENFELD: You don't mean the peak.

THE WITNESS: Yes.

JUDGE BLUMENFELD: You are talking about the

depth, aren't you?

THE WITNESS: It's a peak load for us.

A. The initial and continued claims together in the early part of 1971 went as high as 118,000.

Q. That's the number of claimants per week?

A. Number of claimants per week.

Q. What is it right now, do you know?

A. It's approximately 40,000.

Q. How much was paid out each week?

A. We exceeded $6 million per week in payments during the peak. We are down now slightly over $2 million per week.

Q. Could you tell us what the average weekly benefit rate is?

A. ABout $66.67 -- 66.64. That was in '72.

Q. $66.64?

A. Yes, that includes dependency allowances.

JUDGE BLUMENFELD: Per case, then?

THE WITNESS: Yes.

Q. Of course, when an appeal is taken of the administrator's decision to the Unemployment Compensation Commissioner, he renders a decision. Can you tell us the percentage of reversals by the Commissioner of the administrator's decision?

A. It's about 18.8%.

Q. Is that presently the situation?

A This covers the period from May of 1972 through April, 1973.

JUDGE NEWMAN: That's the percentage of administrative decision reversed by the Commissioner, or Commissioner's decisions reversed further up the line?

THE WITNESS: This is the administrator's decision reversed by the Commissioner. In that period there were 9,112 administrator's cases before the Commissioner -- decided by the Commissioner, of which number 1,720 were reversals.

JUDGE BLUMENFELD: What do you call your administrator, a hearing officer?

THE WITNESS: Fact finding examiners make the decision for the administrator.

JUDGE BLUMENFELD: A fact finding administrator, reversed 18.8%?

THE WITNESS: Yes.

MR. CREANE: Is that referring to all hearings, because we have appeals from an initial denial of eligibility and appeals in cases we are talking about from a denial on a continued basis, I am not sure --

THE WITNESS: From all.

JUDGE BLUMENFELD: You don't know how many of these reversals there were on these terminations of

cases?

THE WITNESS: NO, I do not. Not these particular cases.

Q Is that information available, do you know?

A No.

MR. CREANE: I think those figures are available. In one of the reports that the Department submits to the U. S. Labor Department it breaks it down by initial denial and by the results in each of the two categories.

JUDGE BLUMENFELD: This is called continual denial?

MR. CREANE: Denial on a continued claim as opposed to denial on an initial claim.

THE WITNESS: That is the agency report and not the Commissioner's decision report. The Commissioner's decision is not broken down in that fashion.

Q When a denial is made, payments are withheld. Is this denial a forfeiture of that week's benefits?

A No, it's a postponement of eligibility. The individual durational amount is charged only the dollar amount of moneys collected by him.

Q So if he should continue to file, that money would still be available for him, is that true?

A Yes.

Q Reference has been made to the great delay in getting

out decision once an appeal of the Commissioner's decision has been made. Can you tell us, in your opinion, what the reason is for this delay?

A The work load that was before the unemployment commission, they presently have over 6,000 back-log cases.

JUDGE BLUMENFELD: Manpower, is that the reason for the delay?

THE WITNESS: Manpower and work load.

Q Can you tell us what the effect would be if a claimant upon coming in and being seated for an interview and an examiner finding that he didn't make reasonable efforts if he then had to schedule another hearing, say, approximately a week's time, what effect would that have on the administration?

A I would say on the basis of the staffing provided, we would be unable to handle the number of cases involved.

JUDGE BLUMENFELD: You mean you can only handle them on a biweekly basis?

THE WITNESS: We had to handle on a biweekly basis because of the taxing of the office space and staff, yes.

JUDGE SMITH: Did you have more staff when you had 118,000 --

THE WITNESS: Yes, substantially more. We are budgeted on a work load basis, and as our work load

drops, our staffing drops. Our staffing during the peak was better than 1,050 people. We are down now to approximately 550 people.

JUDGE NEWMAN: Who makes the determination to take the person out of the line where he is going to get his benefits and send him over to wherever he gets the seated interview?

THE WITNESS: It must be made by the line examiner.

JUDGE NEWMAN: If the line examiner, instead of sending him over to this other room -- is this in the same building?

THE WITNESS: Yes, the same office space.

JUDGE NEWMAN: If he said, "Instead of going over there now, go over three days from now when there is going to be a hearing, to see if you made sufficient efforts," would that change the work load of your agency?

THE WITNESS: Well, a lot of our work load -- I should say it this way -- we schedule our continued work load and we are scheduled, and we anticipate being able to handle what work load is before us, we do have some say in work load that we cannot control. Issues that arise on initial claims, including the questions of some dependents in allowances, therefore, we are

in a better position to handle on a one-visit basis than we are to handle on a subsequent basis.

JUDGE NEWMAN: On any given day you presumably have an estimate on how many seated interviews that are going to be?

THE WITNESS: Yes.

JUDGE NEWMAN: You are staffed to go to take care of that?

THE WITNESS: WE hope we are staffed to take care of that.

JUDGE NEWMAN: You try. If tomorrow you told all your line examiners, instead of sending them for seated interviews, immediately send them for seated interviews three days later, would that in any way add to the administrative burden of the agency?

THE WITNESS: Well, that would, because there has to be a decision or a determination on this day that the individual files a claim for benefits whether or not he should be paid. Now, if you postpone that until three days hence, that record again has to be handled in order to determine whether or not that payment, if made, should have been made.

JUDGE NEWMAN: There must be a yes or no decision that day?

THE WITNESS: Yes, there has to be a yes or no decision that day.

JUDGE NEWMAN: What requires that?

THE WITNESS: For the purpose of operations. If you have to handle each individual so involved twice, it takes extra time to handle, because there is a claim record card that must be pulled and presented to the interviewer who is going -- or the claims examiner who is going to handle, and you have your lines scheduled for the operations -- most of whom are paid in the course of the day.

JUDGE NEWMAN: I am only talking about the ones where the line examiner thinks maybe it shouldn't be paid.

THE WITNESS: I understand that.

JUDGE NEWMAN: AS to those, he now says, "Go across the room right now and have a hearing"?

THE WITNESS: Yes.

JUDGE NEWMAN: Which you call a seated interview, and I want to know what burden would there be if he said, "Come back in three days and have a hearing or seated interview"?

THE WITNESS: Well, if we did not pay, then we would have to justify the fact that it was not paid

through the facts that arise, but if we had to pay . and then interview, we may be setting up overpayments in cases where payments should not have been made.

JUDGE NEWMAN: What do you do in the case that you told us about a little earlier where the man goes for a seated interview and he says -- and the employer card says, "We offered him a job," and man says, "WE -- I didn't get one," and your response to us earlier was that you check into that further?

THE WITNESS: Yes.

JUDGE NEWMAN: Do you make a payment that day?

THE WITNESS: They have to check it right while th claimant is there. Now, there are cases where due to the circumstances of the case whereit may be held for one additional day, and the examiner will pursue the information, and if payment is due, the payment would be mailed to the individual rather than have the individual come back.

BY MR. WASIK:

Q The line examiners and the fact finding examiners, can you tell us briefly what kind of training these people recei

A We attempt to have group training where the fact finders -- the line examiners first come in, they have to learn the different facets of the work. We try to give them an entran

training for several days in the central office, then they are put to work with more experienced people in different areas. There are many areas from which they work, and as they gain experience, there is continuous training of these individuals.

The fact finding examiners basically are people who have worked as line examiners, have become exposed to the fact finding operation. They receive their appointment as fact finders through promotions. They are given group training to begin with, they are --

JUDGE BLUMENFELD: Are we really concerned greatly with the quality and competence of the personnel in this case?

MR. WASIK: I think we are, your Honor, because the plaintiffs are laying great stress on the fact that these people are the ones who make the decision initially, whether or not payments will be interrupted, and they are claiming thatthe standards of the statute are very vague, that these people are pretty free to do anything they want, and I am trying to establish that these people are highly trained, they are continually trained, and they have guide lines to guide them that are issued periodically by the Department.

JUDGE NEWMAN: Is it your claim that the more training a decision maker has the less procedural

due process right a person has to appear before him and have a due process hearing?

MR. WASIK: No, not at all. I am trying to show --

JUDGE NEWMAN: What difference what his training is? They are not saying he is incompetent, they say they want the right to certain procedures to be before him.

MR. WASIK: Maybe I am anticipating counsel's argument.

JUDGE BLUMENFELD: It's pretty late in the day to allow that. We are at 5 o'clock now.

MR. WASIK: I won't pursue the matter further. I have no further questions.

MR. CREANE: I have one question.

REDIRECT EXAMINATION

BY MR. CREANE:

Q When an employer, you say when he is defined as being an interested party, that the defendant will take into account any information supplied by him as a third party in making a decision, for example, on refusal of a job, is that correct, when he is an interested party?

A I didn't limit it to the interested party, but where he is an interested party, yes.

Q For example, where he was the person's last employer?

A Yes.

Q Doesn't that person stand to benefit if the claimant is denied benefits? Isn't his -- he doesn't have to pay as much into the unemployment fund?

A His merit rating charge credit establishes -- helps to establish what his rate of contribution would be, yes.

Q So he has a financial interest if the person is denied benefits?

JUDGE BLUMENFELD: That's on eligibility.

MR. CREANE: This is a continued --

JUDGE BLUMENFELD: We are concerned about availability.

MR. CREANE: This is on availability and reasonable effort, your Honor.

JUDGE BLUMENFELD: If he is already being made available, the employer is stuck with him as one who is eligibleand, therefore, was not -- didn't leave the job improperly. Am I accurate about that?

THE WITNESS: Yes. The only point at issue would be a refusal of work.

Q That's the situation I am talking about.

A The facts of unavailability would not give the employer credit. The question on the individual's ability to work

would not give the employer any credit on the charge. It's only on a work refusal.

Q If the former employer says, "He refused a job when I offered it to him," then he would stand to benefit, would he not?

A Yes.

JUDGE BLUMENFELD: Who would?

THE WITNESS: The employer would on a credit. If it's within six weeks of the charge week.

Q But he is not required to be at the hearing, even though he has a financial stake in the outcome of that seated interview and the Department can rely on his second-hand information, even though he has a financial interest in the outcome of it?

A I can't accept "rely on", because there is no determination made until the claimant is confronted with the information given, so it's not relying on the employer, it's relying on the facts, total facts in the case.

Q I understand, but if there is a difference of opinion, they may decide in favor of the employer that the claimant is not telling the truth, is that correct? I think you already stated that.

JUDGE BLUMENFELD: We are aware of the point you are trying to make, Mr. Creane.

Is there something else?

MR. WASIK: I guess you can step down.

I have a few questions of Mr. Eisenman.

(Witness excused.)

Def. Ex. C

YOUR RIGHTS AND RESPONSIBILITIES

UNDER

THE CONNECTICUT UNEMPLOYMENT COMPENSATION LAW

CONNECTICUT LABOR DEPARTMENT
EMPLOYMENT SECURITY DIVISION
UNEMPLOYMENT COMPENSATION DEPT.

OCTOBER 1, 1971

This booklet explains in brief form your rights and responsibilities under the Connecticut Unemployment Compensation Law. It provides information to help you file your claims for unemployment benefits and to understand how your benefits are determined.

It is in your interest to read it and follow the instructions. If you have any questions which are not answered here, visit, telephone or write to one of our offices. DO NOT SEEK ADVICE ELSEWHERE — you may be given the wrong advice and thus be deprived of benefits which are rightfully yours.

It is the intent of this department to pay every eligible worker the unemployment benefits to which he is entitled. It has made provision for payment with the utmost speed. Your cooperation is necessary to accomplish this objective.

JACK A. FUSARI
Labor Commissioner

CARL D. EISENMAN
Executive Director

TO START YOUR CLAIM

- Report in person to an office of the Employment Security Division AS SOON AS POSSIBLE after becoming unemployed. You *cannot* receive benefits for weeks of unemployment before you file your first claim.
- Bring your Social Security Card and Unemployment Notice. DO NOT DELAY FILING if you do not have them. Your claim *can* be taken without them.
- Register for work with the Connecticut State Employment Service.
- Report to the Unemployment Compensation Department and file your claim for unemployment benefits.

  Be sure to report to *both* of these agencies — they are usually located in the same office.

TO CONTINUE YOUR CLAIM

- You will be given a claim to complete at home and bring with you at your next scheduled reporting time.

  Complete all items *except* the signature. Wait to sign the claim at the office in the presence of the claims interviewer.
- REPORT ON THE DAY AND AT THE TIME FOR WHICH YOU ARE SCHEDULED.

  You will be scheduled to file your claim at a particular time. If, for any reason, you

cannot report on your scheduled date or time, come to the office AS SOON AS POSSIBLE following the appointment.

A scheduled appointment permits you to file your claim and receive your check as promptly as possible. If claims were not scheduled throughout the week and all claimants could come at any time, there would be long lines and considerable waiting.

If you cannot report as scheduled because you have returned to work, you may file your claim by mail, as explained on pages 12—13.

- BRING YOUR IDENTIFICATION CARD AND CLAIMS BOOK (if you have one) FOR PROMPT PAYMENT OF BENEFITS.

- REPORT ALL WORK DURING THE WEEK FOR WHICH YOU ARE CLAIMING BENEFITS.

  Even though payment for the work might not have been received, the work must be reported and wages *payable* must be deducted in computing your benefits.

- REPORT REMUNERATION OF ANY KIND you have received or *are to receive* from an employer for the week for which you are claiming benefits.

  Report remuneration such as: wages and earnings of any kind, vacation pay, pension payments, casual earnings, dismissal payments, severance pay, or wages in lieu of notice.

- REPORT ANY CHANGE in address, marital status, number of dependents, etc.
- FILE YOUR CLAIM FOR PARTIAL BENEFITS when you receive notice from your employer of the amount of your earnings for a calendar week of less than full-time employment. A claim for partial benefits may be filed *within* four weeks from the date you receive notice of your earnings.

  If you have them, bring any forms confirming the gross amount of your earnings, such as payroll vouchers.

ELIGIBILITY REQUIREMENTS

To receive benefits for any week, you must:

- Be totally or partially unemployed;
- Have filed your claim for benefits and have kept your work registration active at the Connecticut State Employment Service;
- Be physically and mentally able to work, available for work and making reasonable efforts to find work;
- Have been PAID wages by a "covered" employer during your base period equal to at least 30 times your benefit rate. Some part of these wages must also have been paid or earned in at least 2 different calendar quarters of your base period.

AMOUNT OF BENEFITS

The amount of your benefits is computed from the record of the wages paid to you in COV-

ERED EMPLOYMENT during the BASE PERIOD of your current BENEFIT YEAR. Benefits are paid out of the unemployment compensation fund, which is financed by taxes paid by employers only. No *deductions* for this purpose are made from your wages.

BENEFIT YEAR. The "time limit" for drawing your benefits. It starts the Sunday of the week for which you file a valid initiating claim and continues for the remainder of that calendar quarter and for the next 3 calendar quarters, plus the remainder of any uncompleted calendar week at the end of the period.

CALENDAR QUARTERS. The quarter years ending on the last day of March, June, September and December.

BASE PERIOD. The first 4 of the 5 most recently *completed* calendar quarters prior to your benefit year.

COVERED EMPLOYER. After December 31, 1967, an employer of one or more workers during any 13 weeks in a calendar year is subject to the Unemployment Compensation Law at the end of the thirteenth week.

(For *exceptions,* see pages 19—20.)

Other employers may accept coverage through a written agreement with the Administrator.

(See pages 14—17 for Federal, State and Municipal Employees and Non-Profit Organizations.)

EARNINGS REQUIRED TO QUALIFY FOR BENEFITS.

- You must have been PAID wages during your base period equal to at least 30 times your benefit rate. Some part of these wages must also have been paid or earned in at least 2 different calendar quarters of your base period.

- If you received benefits in the preceding year, to qualify for benefits in a SUBSEQUENT benefit year, you must have again become employed and been paid wages of AT LEAST $150 after the beginning of the preceding benefit year.

- WEEKLY BENEFIT RATE. Your weekly benefit rate shall be equal to one twenty-sixth, rounded to the next higher dollar, of your total wages paid to you in the highest quarter of your base period.

  The minimum weekly rate is $15. The maximum weekly rate CANNOT BE MORE THAN 60% of the average wage for production and related workers in Connecticut. The average wage will be determined once a year by the Administrator.

  For new claims effective on or after the first Sunday in October, 1969, and every year thereafter, the maximum benefit rate can only increase by an amount NOT TO EXCEED $6 a year.

- BENEFITS FOR PARTIAL UNEMPLOYMENT.

  If you are employed less than full time during any week, and you earn less than 1½ times your weekly benefit rate, you may be entitled to the difference between your weekly Benefit Rate and 2/3 of your earnings.

- DEPENDENCY ALLOWANCE.

If you are eligible for unemployment benefits, you may be entitled to an allowance of $5 if, after the beginning of your benefit year, your husband or wife is LIVING WITH YOU, is TOTALLY unemployed, and has NOT worked for the past three months. You may also receive this additional benefit if your husband or wife is presently unemployed because of a mental or physical DISABILITY that is expected to last for a long and indefinite period, or because your wife is unemployed and pregnant.

You are also entitled to a dependency allowance of $5 a week for each child or step-child who was being wholly or mainly supported by you, and was under 18 years of age at the BEGINNING of your current Benefit Year, or who was mentally or physically handicapped and was wholly or mainly supported by you because of such handicap, regardless of age. If you acquire any additional dependents during your benefit year, your dependency allowance may be increased during the next complete calendar week. If both you and your husband or wife receive benefits for the SAME week, NEITHER of you

can collect a dependency allowance for the other, and only ONE of you may claim an allowance for each child or step-child.

Total dependency allowances cannot be more than 50% of your Weekly Benefit Rate (in whole dollars).

NUMBER OF WEEKS OF BENEFITS

You cannot receive more than twenty-six weeks of regular benefits for total unemployment.

MAXIMUM BENEFIT AMOUNT

You will be limited to either 26 times your unemployment benefit rate *or* an amount (including your benefit rate and dependency allowances) not to exceed 75% of your base period earnings, whichever is less.

BENEFITS PAYABLE DURING PERIODS OF SUBSTANTIAL UNEMPLOYMENT

Substantial unemployment exists when the rate of insured unemployment for the most recent 13-week period equals or exceeds 4% and is 120% or more above the average of rates for the corresponding 13-week period in each of the preceding two years. During such a period, EXTENDED benefits will be payable in an amount equal to your regular weekly benefit rate, plus dependency allowances, for up to 13 weeks under a Federal-State cooperative agreement. If you have received the maximum amount of REGULAR and EXTENDED benefits prior to the end of your current benefit year, you will

be paid for the remainder of your benefit year ADDITIONAL benefits in the same amount for up to 13 weeks. You cannot receive ADDITIONAL benefits under the State law until you have been paid the full amount of your entitlement to EXTENDED benefits under the Federal-State agreement.

DISQUALIFICATIONS

If it is found that your unemployment is due to any of the *three causes* below, you will be DISQUALIFIED FOR BENEFITS FOR THE WEEK IN WHICH THE SEPARATION OR FAILURE OCCURRED *and* the FOUR WEEKS IMMEDIATELY FOLLOWING.

In such cases, your BENEFIT PAYMENTS will be POSTPONED and the PERIOD OF DISQUALIFICATION must elapse before you are again eligible for benefits.

- You left suitable work VOLUNTARILY and WITHOUT SUFFICIENT CAUSE CONNECTED WITH YOUR WORK.
- You were DISCHARGED OR SUSPENDED FOR WILLFUL MISCONDUCT IN THE COURSE OF YOUR EMPLOYMENT.
- You FAILED WITHOUT SUFFICIENT CAUSE TO APPLY FOR SUITABLE WORK when directed to do so by the Connecticut State Employment Service or to accept suitable work when offered by an employer.

YOU WILL ALSO BE DISQUALIFIED FOR BENEFITS if it is found that:

- Your total or partial unemployment is due to the existence of a **LABOR DISPUTE**, other than a lockout, in which you are interested or participating.
- **YOU RECEIVE OTHER REMUNERATION** in the form of wages in lieu of notice, dismissal payments or any payment as compensation for loss of wages, or any other state or federal unemployment benefits; workmen's compensation for temporary disability; retirement pay or pension paid directly or indirectly by an employer if the amount of pension equals or exceeds your benefit rate for total unemployment.

  (See PENSIONS, pages 17—18.)
- **YOU LEFT WORK TO ATTEND SCHOOL.** You will remain ineligible for benefits during attendance at a school, college or university as a regularly enrolled student.
- You voluntarily retired from your employment for reasons other than the fact that your work became unsuitable in view of your physical condition and the degree of risk to your health and safety. In the event of such retirement, you will remain ineligible until you have again become employed and have been paid wages amounting to 30 times your benefit rate.
- You received **BENEFITS IN A PRIOR BENEFIT YEAR AND WERE NOT AGAIN EMPLOYED AND PAID WAGES OF AT LEAST $150 SINCE THE BEGINNING OF THAT BENEFIT YEAR.**

- You left your job because of PREGNANCY or were discharged because of pregnancy in accordance with a reasonable rule of your employer providing for the separation of pregnant women.

  No woman is eligible to receive benefits during the period of two months before childbirth and if the child is alive, such ineligibility continues for two months after childbirth.

  You will continue to be ineligible for benefits after childbirth until you have applied without restrictions for reemployment with your most recent employer after the expiration of the two-month disqualification period.

  If you refuse to accept such reemployment, benefits may be denied in accordance with the refusal of work provision stated above, and you will continue to be ineligible until you have registered for work at the Connecticut State Employment Service, applied without restrictions for suitable employment, and are available and making reasonable efforts to obtain work.

  A doctor's certificate may be required to establish the date of expected childbirth or physical ability to work. Whenever there is a question about your eligibility to receive benefits, you will be given the opportunity to review all facts about your claim with a claims interviewer. A decision as to eligibility or disqualification is made only on the basis of facts required by the law.

PRE-DETERMINATION HEARINGS

If a question arises about your eligibility for benefits, an informal pre-determination hearing will be scheduled at the office where you are filing claims. You will be notified in advance of the time, place and purpose of the hearing, and of any evidence, such as medical certificates, that may be required.

You will have the right to bring witnesses if you wish to do so. If your former employer is involved, he will also be notified in advance of the hearing and will have the right to attend or furnish information by mail or telephone. The employer also has the right to representation.

If you are unable to attend such a pre-determination hearing at the scheduled time, you should notify the office so that rescheduling or other appropriate action may be taken. Requests for postponement will be granted only in compelling circumstances. It is to your advantage to appear as scheduled and to co-operate fully in providing the information necessary to determine your eligibility. Failure to do so might result in denial of benefits, since claims must be decided on the basis of information available.

APPEAL RIGHTS

- If you are notified that your claim has been disallowed or that you have been disqualified for benefits, you may appeal to an Unemployment Commissioner. You must *file* your appeal within 7 days of the mailing date of your notification, exclusive of Sundays and Holi-

days. The appeal period will be extended to the next business day if the last day for filing falls on any day when the office is closed.

You may file an appeal by presenting your decision letter to the office where you filed your claim and requesting an appeal from that decision or by sending a letter to that office stating that a hearing is requested. If you desire advice or assistance in filing an appeal, it will be furnished to you by a member of the local office staff upon your request.

The Unemployment Commissioner in your district will notify you of the date of the hearing at which you should appear.

An employer has the right to appeal the payment of benefits to a claimant who was terminated for a reason other than lack of work.

While you are awaiting the Unemployment Commissioner's decision, you should CONTINUE TO FILE CLAIMS, but payment must be held up during any period for which benefits have been denied. If your claim has been approved, you will have the option of receiving immediate payment or postponing payment until a final determination has been made.

Any decision of the Unemployment Commissioner may be appealed to the State Courts by the claimant, employer, or the Administrator.

FILING YOUR LAST CLAIM WHEN YOU RETURN TO WORK.

If you return to work before the scheduled date

for filing your claim, you may file your claim by mail within 90 days after the week of unemployment for which you are claiming benefits.

When a claim is filed by mail, the back of the claim form must be filled in to show the Name and Address of the Employer and the EXACT DATE YOU STARTED WORK. Complete the face of your claim, sign it, and mail it to the office where you have been reporting to file claims. If you do not have a claim form, you may obtain one by writing to the Unemployment Compensation office in your area.

IF YOU MOVE AWAY FROM CONNECTICUT

If you move to another state and desire to file claims for Unemployment Compensation against Connecticut, go to the nearest Employment Security Division office in the other state. Your claim against Connecticut will be taken there, or you will be informed as to the steps to be taken to file your claim. If you are filing claims prior to moving, discuss your plans with the Connecticut office, which will furnish instructions on continuing your claims in the other state.

INTERSTATE CLAIMS

If you have moved to Connecticut from another state where you have potential rights to benefits under the unemployment compensation laws of the other state, you may file your claims at an office of the Connecticut Unemployment Compensation Department. As an agent for the other state, the Department takes your claims, obtains

related information, and forwards the materials to the other state which determines your eligibility and pays your benefits under provisions of its unemployment compensation law.

- If you worked in other states during your base period, discuss the matter with the claims interviewer, who will advise you of the requirements of the state(s) where you have earned wages and potential benefit rights.

FEDERAL EMPLOYEES AND EX-SERVICEMEN

Under an agreement with the Federal Government, the Connecticut Unemployment Compensation Department administers two Federal programs: Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemen (UCX).

If you were a Federal civilian employee or were in active military service, you may file a claim for unemployment benefits in Connecticut under the Connecticut Unemployment Compensation Law. (See Eligibility Requirements, page 3 and Disqualifications, pages 8—10.)

Your benefit payments will be in the same amounts for the same period, under the same terms and conditions as are provided under the Connecticut Law. (See Weekly Benefit Rate, page 5, Number of Weeks of Benefits, page 7, Maximum Benefit Amount, page 7.)

The Federal Government furnishes the funds to pay benefits to unemployed Federal workers and ex-servicemen.

- If you were a FEDERAL CIVILIAN EMPLOYEE:

  Your benefits will be paid under the Connecticut Law if:

  Your LAST Federal employment was in Connecticut; or

  You are living in Connecticut and your LAST Federal employment was outside:

  The 50 States;

  The District of Columbia;

  Puerto Rico.

  If you are living in Connecticut and your LAST Federal employment was in another State, the Connecticut Law will apply if, AFTER your Federal employment, you worked for a private employer who was COVERED under the Connecticut Law. (If you did NOT work for a COVERED employer in Connecticut AFTER your Federal employment, your benefits would be paid on an Interstate basis under the unemployment compensation law of the other State.)

  You CANNOT receive any benefits during the period after separation for which you received a payment for TERMINAL ANNUAL LEAVE or SEVERANCE PAY.

  You will NOT be eligible for benefits if you retired VOLUNTARILY from the Federal Civil Service. However, you may be entitled to receive benefits if your voluntary retirement occurred UNDER CERTAIN CONDITIONS, or, your retirement was MANDATORY. (See pages 9 and 17—18.)

- If you are an EX-SERVICEMAN:

  You may receive benefits if you had 90 or more days of ACTIVE military service (or less than 90 days under certain conditions) and you were separated under HONORABLE conditions.

  Your benefits will be paid under the Connecticut Law if this is the FIRST State in which you filed your claim AFTER separation from active military service.

  The amount of your benefits will depend on the BASE PAY and ALLOWANCES you received for the pay grade held by you at the time of your discharge from active military service. Wages earned as a CIVILIAN may also be used to determine your benefit amounts.

  No benefits can be paid to you until you present your Separation Form DD-214. If you lost, or were not issued, a Form DD-214, this office will assist you in obtaining the form from your branch of service.

Benefits will NOT be paid to you during any period for which you received:

A lump-sum payment for military accrued leave;

A subsistence allowance for vocational rehabilitation training, or, a war orphan's educational assistance allowance from the Veterans Administration;

Military severance pay.

Under the Connecticut Law, if you are a MILITARY RETIREE, your benefits must be REDUCED by the WEEKLY amount of your military pay. (See pages 9 and 17—18.)

STATE AND MUNICIPAL EMPLOYEES

You may be eligible for unemployment benefits if you are otherwise eligible under the Connecticut Unemployment Compensation Law and were employed by:

- The STATE OF CONNECTICUT in the CLASSIFIED service;
- A town, city or political subdivision of this state, excluding services performed by elected officials, members of boards and commissions, and as a professional specialist employed part time.

NON-PROFIT ORGANIZATIONS

Certain non-profit organizations organized and operated for charitable, scientific, literary or higher educational purposes, or for the prevention of cruelty to children or animals became liable under the Connecticut Unemployment Compensation Law as of January 1, 1971. You may be eligible for benefits if you worked for such non-profit organizations, including hospitals.

WHEN YOU RECEIVE A PENSION

A pension paid directly or indirectly by an employer may reduce the WEEKLY AMOUNT of

benefits payable to you by the amount of your weekly pension payment.

If you are unemployed and receiving, or about to receive, a pension or retirement pay from an employer, you should report this payment — *whether it is paid in a lump sum or not* — in order that your rights to unemployment compensation may be properly determined. Each case is determined individually, according to the type of retirement plan.

INTERVIEWS WHEN YOU FILE CLAIMS

HAVING OTHER CLAIMANTS WAIT BEHIND THE WHITE LINE IN FRONT OF THE CLAIMS COUNTER provides privacy for your brief interview when you file your claim.

When you are awaiting your turn in line, you are asked to "wait behind the white line" to give the same privacy to others.

INTERVIEWS

Seated interviews are given when more information is necessary. Such interviews are conducted to:

- Give you information about your benefit rights;
- Answer your questions;
- Adjust your benefit payments;
- Determine your eligibility for benefits.

OVERPAYMENTS

If you receive any benefits to which you are not entitled, regardless of the reason, the law requires that you repay the amount overpaid.

PENALTIES

Any person who knowingly makes a false statement or representation or fails to disclose a material fact in order to obtain benefits or increase the amount of benefits to which he is entitled is subject to penalties specified in the law.

He must repay all benefits received because of such false statement, misrepresentation or failure to disclose a material fact. He may be prosecuted for knowingly violating the law. In addition, he shall receive a decision, after a hearing, causing him to forfeit not less than two weeks nor more than twenty weeks of benefits to which he would otherwise have been entitled.

If you disagree with a decision that you are overpaid or that you are to forfeit weeks of benefits, you may appeal to the Unemployment Commissioner in the manner described under APPEALS, pages 11—12.

EMPLOYMENT NOT COVERED BY LAW

The law excludes the following employment from coverage:

Agricultural labor;

Domestic service in a private home, local college club or chapter of a college fraternity or sorority;

Any employment in Connecticut which is subject to provisions of the Unemployment Compensation laws of another state;

Casual labor not in the regular course of an employer's trade or business;

Newsboys under 18 years of age. (Delivering newspapers to customers.)

Insurance agents, other than industrial life insurance agents, and real estate salesmen, paid solely by way of commission;

Children under 21 employed by a parent and anyone employed by his or her child or spouse are excluded from covered employment and voluntary acceptance is prohibited.

GENERAL INFORMATION

CALENDAR WEEK. The seven-day period which *starts* on Sunday and *ends* on Saturday. All claims are filed on a calendar week basis.

Whenever you make a scheduled visit to the office to file a claim, you are *always* filing a claim for the *calendar week which ended the previous Saturday*. It is important for you to remember this, whether you are scheduled Monday, Friday, or any other day.

TOTAL UNEMPLOYMENT. A week of total unemployment is one in which you have performed no services for which remuneration of

any nature is payable, and you have not engaged in self-employment.

PARTIAL UNEMPLOYMENT. You are considered partially unemployed in any week of less than full-time work in which you earned less than 1½ times your weekly benefit rate.

AVAILABLE FOR WORK. You must be ready, willing and able to take any suitable job on a full-time basis.

IF YOU ARE SICK OR OTHERWISE DISABLED. If you are sick during a week(s), you are not considered to be physically able to work, and may be ineligible for benefits during that period, depending upon the duration of the illness.

REASONABLE EFFORTS TO FIND WORK. Your efforts to get a job must be the efforts which a person out of a job would make if he is sincerely looking for work.

Be sure you keep your application at the Connecticut State Employment Service active. The Employment Service will assist you in obtaining work but you must also make your own search for work.

When the Employment Service calls you in to discuss job openings, you should go to the office promptly and not wait until your claim appointment. You should be suitably dressed for referral to an employer when you come to the office to discuss a job or to file your claim.

ALWAYS PRESENT YOUR IDENTIFICATION CARD AND CLAIMS BOOK when filing a claim for benefits. Keep them when you return to work for possible use in the future.

HELPFUL HINTS FOR THE JOB SEEKER

Keep your application active at the Connecticut State Employment Service. If you need help in deciding the kind of work to seek, ask for advice—job counseling is available.

Plan your campaign to find a new job. Find out which companies hire workers who do your kind of work. Decide where your best chances are for a job. Go there first.

Take the names and addresses of former employers, dates you worked for them, your social security number, and permits and licenses if required.

Apply in person wherever possible. See and talk to the one who does the hiring.

Your personal appearance is important! Be neat and dressed ready to start work.

When you apply for work, don't take friends, relatives or children into the office with you.

When you have an appointment about a job, keep it and be there on time.

Don't apply during the lunch hour or after working hours.

Be businesslike and brief. Avoid talking about your personal, domestic or financial problems.

INDEX

OFFICES OF THE UNEMPLOYMENT COMPENSATION DEPARTMENT

Ansonia	435 E. Main St.	734-3367
Bridgeport	67 Washington Ave.	335-0112
Bristol	59 North Main St.	583-1355
Danbury	64 West St.	743-3841
Danielson	14 School St.	774-8581
Enfield	110 High St.	745-3371
Hartford	90 Washington St.	566-4369
Hartford	2550 Main St.	566-2850
Manchester	806 Main St.	649-4558
Meriden	24 So. Grove St.	235-6374
Middletown	437 Main St.	346-8683
Milford	625 Bridgeport Ave.	878-8377
New Britain	100 Arch St.	223-3611
New Haven	770 Chapel St.	777-4421
New London	170 Bank St.	443-2041
Norwalk	3 Berkeley St.	838-0623
Norwich	1 Railroad Ave.	887-3587
Putnam	50 Canal St.	928-2749
Stamford	1340 Wash. Blvd.	348-7505
Torrington	350 Main St.	482-5581
Waterbury	83 Prospect St.	754-6103
Willimantic	476 Valley St.	423-2521
Winsted	10 Bridge St.	379-2735
Interstate	200 Folly Brook Blvd. Wethersfield	566-4378

Central Office

Unemployment Compensation Department
200 Folly Brook Boulevard
Wethersfield, Connecticut
Mail: Hartford, Connecticut 06115

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LARRY STEINBERG and CECIL PASKEWITZ and DELIA TRIANA and JUAN MIRANDA

v.

JACK A. FUSARI, *Commissioner of Labor*, The Administrator, The Unemployment Compensation Act, State of Connecticut

CIVIL NO. 15,104

JUDGMENT

This action having come on for hearing on the merits before a three-judge District Court, convened pursuant to 28 USC §§ 2281 and 2284, The Honorable J. Joseph Smith, United States Senior Circuit Judge, The Honorable M. Joseph Blumenfeld, Chief Judge, United States District Court, and The Honorable Jon O. Newman, United States District Judge, presiding, and the Court having rendered its Memorandum of Decision, Findings of Fact and Conclusions of Law under date of September 17, 1973, finding that the "seated interview" system as currently used for terminating or suspending the payment of unemployment compensation benefits does not provide minimal due process under the Fourteenth Amendment to the Constitution,

It is ORDERED and ADJUDGED that the defendant Administrator, his successors in office, agents, and employees are hereby enjoined from administering Chapter 567, Conn. Gen. Stat. (§31-222 *et seq.*) in such a manner as to deprive members of the plaintiff class of unemployment benefits without first according them a constitutionally sufficient prior hearing.

Dated at New Haven, Connecticut, this 19th day of September, 1973.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: FRANCES J. CONSIGLIO
Deputy In Charge

MEMORANDUM OF DECISION

(Printed in Jurisdictional Statement, page 1A)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

MOTION FOR SUSPENSION OF INJUNCTION PENDING APPEAL

The defendant, pursuant to Rule 62(c) of the Federal Rules of Civil Procedure, moves the Court for an order suspending the injunction heretofore granted on September 17, 1973 by a Three-Judge Court of the United States District Court for the District of Connecticut (Smith, Blumenfeld, and Newman) pending appeal or further disposition of this case, on the following grounds:

1. It is impossible for the defendant to devise, in a short period of time, a workable system which will comply with the Court's Order.

2. Since it is expected that many nonrecoverable overpayments will result because of the Order, the defendant, already greatly in debt to the Federal Government, should not be forced into greater insolvency until the United States Supreme Court has had the opportunity to review said Order.

WHEREFORE, the defendant respectfully moves that a suspension of the injunction be granted.

Dated at Hartford, Connecticut, September 24, 1973.

(Signature of Counsel and Certiciation Omitted in Printing)

APPROVED:

J. JOSEPH SMITH
United States Senior Circuit Judge

M. JOSEPH BLUMENFELD
Chief Judge, United States District Court

JON O. NEWMAN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LARRY STEINBERG, et al

v.

JACK A. FUSARI, *Commissioner of Labor*, The Administrator, The Unemployment Compensation Act, State of Connecticut

CIVIL NO. 15,104

ORDER

NEWMAN, District Judge:

Defendant having moved for a stay pending appeal of the injunction issued by this Court on September 17, 1973, and the motion having been heard on October 1, 1973, before a member of the three-judge court, it is hereby ORDERED that the injunction issued by this Court on September 17, 1973, is stayed pending disposition of defendant's appeal by the Supreme Court, provided that defendant file a notice of appeal with this Court by October 9, 1973, and file a jurisdictional statement with the Supreme Court by November 9, 1973.

Dated: October 3, 1973.

J. JOSEPH SMITH
United States Circuit Judge

M. JOSEPH BLUMENFELD
Chief United States District Judge

JON O. NEWMAN
United States District Judge

Supreme Court of the United States

No. 73-848

JACK A. FUSARI, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act,

Appellant,

v.

LARRY STEINBERG, et al.

ON CONSIDERATION of the motion of appellee Miranda for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

February 19, 1974